

NOTICE TO CONTRACTORS

REQUEST FOR PROPOSAL

**STATE OF IOWA CRIMINAL JUSTICE INFORMATION
SYSTEM (CJIS) ENTERPRISE SERVICE BUS (ESB)**

This Request for Proposal (RFP) seeks a qualified Contractor or Contractors to implement a solution to facilitate automated, real-time, statewide information sharing between disparate State and local criminal justice information systems. The successful solution(s) will conform to the State of Iowa Criminal Justice Information System Integration Plan adopted by Iowa's CJIS Advisory Committee and will utilize technologies, methodologies, and deliverables already procured pursuant to that plan.

Submitted by:

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TABLE OF CONTENTS

THIS REQUEST FOR PROPOSAL CONSISTS OF FIVE (5)
CHAPTERS:

CHAPTER 1 – BACKGROUND INFORMATION	3
CHAPTER 2 – CONTRACTUAL TERMS AND CONDITIONS	8
CHAPTER 3 – MANDATORY REQUIREMENTS	26
CHAPTER 4 – PROPOSAL FORMAT AND EVALUATION CRITERIA	39
CHAPTER 5 – ATTACHMENTS	43

CHAPTER 1 – BACKGROUND INFORMATION

TABLE OF CONTENTS

Chapter Purpose	4
Project Description, Purpose and Background	4
Background.	4
Purpose.	4
Description.	5
Instructions Given.	5
Definitions	5
State’s CJIS web site.	6
Nonmaterial Variances.	6
The Plan.	6
Enterprise Service Bus or ESB.....	6
Information Exchange Package Documentation or IEPD.	6
Data Transfer Facilities.....	6
Issuing Officer.	6
IDE.	7
SOAP.	7
WSDL.	7
UDDI.	7
Toolsets.	7

1.0. Chapter Purpose

- A. This chapter is intended to provide the background information necessary for Contractors to submit relevant proposals.

1.1. Project Description, Purpose and Background

- A. Background. Criminal justice agencies throughout Iowa recognize the importance of integrating their information systems in order to share critical data, documents, images and key transactions. In recognition of this need to share information the State of Iowa developed a five year implementation plan to comprehensively integrate statewide justice information systems and databases. Integrated systems improve the quality of information and thereby: improve public safety, eliminate data entry errors and redundant data entry, provide complete, current and timely data, improve the ability to evaluate policy decisions and changes, maximize available resources, improve data retrieval response time, provide for better, more informed decision making, and improve the operational effectiveness of existing systems.

It is well known that each justice agency makes decisions regarding persons or cases that should be shared with other persons or agencies. However, in Iowa criminal justice information systems have been developed in isolation of one another. This results in independent systems that may share common data concepts but cannot easily communicate with each other. Furthermore, the current business practices in Iowa do not presently involve a means of uniquely identifying individuals (i.e., Defendants) whose information is stored in these disparate systems.

- B. Purpose. The objective of the Iowa CJIS initiative is to provide a technology infrastructure that allows the disparate justice applications currently deployed to share critical data and information in an accurate, complete, and timely manner.
- C. The State of Iowa has adopted a service-oriented architecture (SOA) for facilitating information sharing in the Iowa CJIS environment.
- D. The State of Iowa has adopted XML mapped to the GJXDM to perform data exchange.
- E. The goal of this project is to achieve the objective of providing nine information exchanges by implementing an Enterprise Service Bus (ESB). The solution must allow for the efficient, accurate and timely electronic sharing of information within and between justice agencies at all levels of government throughout the State.

- F. Description. The State of Iowa, Division of Criminal and Juvenile Justice Planning (CJJP), requires services to implement a centralized Enterprise Service Bus (hereinafter “ESB”) to facilitate the electronic exchange of information among disparate criminal justice information systems. This ESB will be managing the messaging of non-functional requirements (i.e., getting information where it needs to be when it needs to be) and ensuring that it is secure and from authenticated sources as well as managing the business flow based on rules and content of messages. This ESB will be the centerpiece for the CJIS solution in Iowa. The ESB will support independent agency development cycles and provide a layer of abstraction between business systems and information exchange. The ESB will provide each agency a single point to interface for sharing information with all of their information sharing partners. This process will allow for real-time, event-driven transaction generation and processing. There are specific functional requirements the ESB is required to perform to support the exchange of information from one agency to another, such as the translation of code values, maintaining a standardized charging table, assigning enterprise case and charge tracking numbers, allowing for registration for subscription and notification, as well as logging and auditing functions. In addition, there are specific non-functional requirements the ESB is required to perform that address user interface, security, scalability, and the business processing environment.
- G. Instructions Given. This RFP provides detailed instructions for the development of proposals to provide the required service. This RFP and the winning proposal of the successful Contractor or Contractors shall be included as mandatory parts of the contract between the State and the successful Contractor or Contractors.

1.2. Definitions

- A. The terms given in this subsection may be used throughout the RFP and are provided here to ensure uniformity of understanding. The State reserves sole discretion to determine where and whether a particular definition applies, and as appropriate, whether any part of a proposal complies with a definition given herein.
- B. If the Contractor’s proposal uses any of the terms defined in this section in a way other than how defined, the Contractor’s proposal must clearly articulate its definition of the terms.
- C. If more than one version exists of a standard or specification defined below, the Contractor **must** articulate which version of the standard or specification will be implemented in its solution along with why that version of the standard was selected for implementation, and the Contractor **must** provide a reference to the standard in its proposal.

- D. “State’s CJIS web site.” May be accessed over the internet at <http://www.cjis.iowa.gov>.
- E. “Nonmaterial Variances.” These include, at the State’s discretion, minor informalities:
1. That do not affect responsiveness;
 2. That are merely a matter of form or format;
 3. That do not change the relative standing or otherwise prejudice other Contractors;
 4. That do not change the meaning or scope of the RFP; or
 5. That do not reflect a material change in the products and services.
- F. “The Plan.” This refers to Iowa’s five year Criminal Justice Information Systems (CJIS) Integration Plan. A copy of The Plan may be downloaded from the Internet at http://www.cjis.iowa.gov/cjis_plan_final.html.
- G. “Enterprise Service Bus” or “ESB”. For purposes of this RFP, an ESB is defined as software that provides a centralized, standard interface between trading partners, allowing them to send data back and forth to each other synchronously or asynchronously. Further, an ESB must include Quality-of-Service (QoS) and Operational Management features.
- H. “Information Exchange Package Documentation” or “IEPD”. This refers to a collection of information describing the technical details of how an exchange of information is to occur. The domain models and information exchange package documentation for the nine exchanges defined in The Plan and referenced in this RFP may be downloaded from the internet at <http://www.cjis.iowa.gov/>.
- I. “Data Transfer Facilities.” For purposes of this RFP, these are network facilities that implement and support a variety of protocols, including, but not limited to, SMTP and HTTP.
- J. “Issuing Officer.” The issuing officer for this RFP is:

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- K. “IDE.” Integrated Development Environment.
- L. “SOAP.” The Simple Object Access Protocol specification.
- M. “WSDL.” The Web Services Description Language specification.
- N. “UDDI.” The Universal Description, Discovery and Integration specification.
- O. “Toolsets.” This means the business process modeling tool and any other programming, IDE, or business analysis tool or set of tools used by the Contractor for development or implementation of the requirements of this RFP.

CHAPTER 2 – CONTRACTUAL TERMS AND CONDITIONS

TABLE OF CONTENTS

Chapter Purpose	10
Definition of Contract	10
Proposal Obligations	10
Contractor Qualification Requirement	10
No Minimum Guaranteed	10
Bases other than Price.....	10
Multiple Contracts.	10
Procurement Timetable	11
Detailed Schedule of Events	11
Letter of Intent.	11
Date, Time, and Place to Submit Proposal	12
Withdrawal of Proposals	12
Proposal Opening	13
Presentations	13
Proposal Announcement	13
Award Notice and Acceptance Period	13
Posting of Notice.	13
Contracting Period.	13
Preparation of the Proposal	13
Drafting the Proposal.....	13
Use of Provided Forms.	14
Packaging the Proposal.....	14
Economy of Presentation	14
Multiple Proposals	15
Disposition of Proposal	15
Rejection of Proposal	15
Right to Reject.	15
Reasons for Rejection.	15
Changes and Addenda	16
To the State’s RFP.	16
Right to Amend.....	16
Response to Questions.....	16
To the Contractor’s Proposal.	17
Certification of Independent Price Determination	17
Copyrights	18
Public Records and Requests for Confidentiality	18
Confidential Information.	18
Form of Request.	18
Marking as Confidential.	18
Excised Copy.	18

Limit of Confidentiality.	19
Notice of Release of Confidential Information.	19
Waiver of Liability.	19
Gratuities	19
Restriction on Gratuities.	19
Authorized Reimbursements.	19
Security of Data	19
Access to Confidential Information.	19
Background Investigation.	20
Conflicts Between Terms	20
Proposal Evaluation and Award	20
Review of Responses.	20
Award of Contract.	20
Costs of Preparation of Proposal	20
News Release	20
Release of Claims	21
Selection of Venue and Choice of Forum	21
Toolsets	21
Miscellaneous	21
Right of Independent Procurement.....	21
Participation in Meetings.	21
Timely Information Required.	22
Project Governance.....	22
Substitution of Contractor Staff.	22
Warranty Period Required.	22
Milestone Payments	23
Inquiries	23
Time, Place and Manner.	23
Verbal Representations.	23
Outside Communication Prohibited.	23
Downloading the RFP Amendments from the Internet	23
Questions, Requests for Clarification, and Suggested Changes	23
Submission of Questions.	24
Release of Liability.	24
Questions to Contractor.	24
Nonmaterial and Material Variances	24
Right to Waive.	24
Reference Checks	25
Information From Other Sources	25
Contract Length	25
Initial Contract.	25
Renewal.	25

2.0. Chapter Purpose

- A. This Chapter will provide administrative guidance, and will outline many of the policies and procedures required and expected of Contractors who submit proposals.

2.1. Definition of Contract

- A. The full execution of a separate written contract shall constitute the making of a contract for services, and no Contractor shall acquire any legal or equitable rights relative to the goods or services to be provided in connection with this RFP until a separate written contract, with terms and conditions acceptable to the State, has been fully executed by the State and the successful Contractor. By submitting a proposal, each Contractor acknowledges that any award of a contract or selection of a successful Contractor by the State under this RFP, including, without limitation, any verbal or written notice thereof provided by or on behalf of the State, shall not create any contractual rights or other obligations between State and the successful Contractor until a separate, written contract with terms and conditions acceptable to the State has been executed by the State and the successful Contractor.

2.2. Proposal Obligations

- A. The content of the proposal and any clarification thereto submitted by the successful Contractor shall become a part of the contractual obligation and incorporated by reference into the ensuing contract.

2.3. Contractor Qualification Requirement

- A. Prior to execution of a contract with a successful Contractor, the successful Contractor must qualify to do business with the State.

2.4. No Minimum Guaranteed

- A. Bases other than Price. The State anticipates that the selected Contractor, if any, will provide products and services as requested by the State. The State will not guarantee any minimum compensation to be paid to the Contractor or any minimum usage of the Contractor's products and services by the State. In addition, the State makes no guarantee that it will select a Contractor as a result of this RFP, award or execute a contract, or purchase services.
- B. Multiple Contracts. The State reserves the right to award, in its sole interest and discretion, multiple contracts from this RFP. If multiple contracts are awarded, each successful Contractor will fulfill a defined subset of this RFP.

2.5. Procurement Timetable

Any time listed throughout this RFP is local Iowa time.

- A. The following dates are set forth for informational and planning purposes; however, the State reserves the right to change the dates.
1. Issue RFP **October 31, 2006**
 2. Bidders' Conference (optional) **TBD**
 3. Letters of Intent and Questions Due **November 14, 2006**
 4. Response to Questions Issued..... **November 21, 2006**
 5. Closing Date for Receipt of Proposals and Amendments to Proposals **December 5, 2006**
 6. Announce Successful Contractor..... **December 26, 2006**
 7. Completion of Contract Negotiations And Execution of the Contract..... **January 2007**

2.6. Detailed Schedule of Events

- A. The State issues the RFP on **October 31, 2006**.
- B. The State reserves the right to schedule a bidders conference between the date the RFP is issued and the date that Contractors are required to submit written questions. **If a bidders conference is scheduled, the details will be posted on the State's CJIS website (<http://www.cjis.iowa.gov>).**
- C. Prospective Contractors are invited to submit written questions and/or requests for interpretation or clarification concerning this RFP. Questions and requests for interpretation or clarification must be received by the issuing officer no later than **4:30 p.m. November 14, 2006**. Prospective Contractors may deliver their questions by courier, facsimile transmission or by e-mail.
- D. Letter of Intent.
1. The State prefers that each Contractor submit a letter of intent to bid by the Contractor or the Contractor's representative to the Issuing Officer by **4:30 p.m., November 14, 2006**. The letter of intent to bid should include the Contractor's name, mailing address, electronic mail address, fax number, telephone number, a statement of intent to bid for the contract to provide a criminal

justice information system (CJIS) enterprise service bus (ESB) to the State of Iowa, and an authorizing signature.

- E. The issuing officer will issue written responses to questions regarding the RFP or requests for interpretation or clarifications which are timely received in written form by the issuing officer. **The written questions and responses will be posted on the State's CJIS web site as soon as practical.**
- F. The State will be bound only by written responses to written questions.
- G. Proposals must be received by the issuing officer no later than **3:00 p.m. December 5, 2006.**
- H. After **3:00 p.m. December 5, 2006**, the names of prospective Contractors who timely submit proposals will be announced via the State's CJIS website. Announcement of the names of prospective Contractors who submitted proposals is not a guarantee that the Contractor(s) has/have met the format or technical specifications of the RFP. The contents of proposals shall remain confidential until the proposals have been evaluated and the State issues a notice of intent to award a contract.
- I. The proposals will be evaluated and a notice of intent to award will be issued as soon as possible following the deadline for receipt of proposals. Proposals must be held firm and irrevocable, and may not be withdrawn by prospective Contractors for a period of 180 days following the due date. In the event that the State and the successful Contractor are negotiating an agreement on or after the 180 days have elapsed from the date of the notice of intent to award or the date on which any appeals relative to this procurement are resolved, whichever is later, the Contractor agrees to hold the price firm pending execution of an agreement with the State.

2.7. Date, Time, and Place to Submit Proposal

- A. The State must receive the proposal at the **Department of Human Rights, Division of Criminal and Juvenile Justice Planning** before **3:00 p.m., December 5, 2006.** **This is a mandatory requirement and will not be waived by the State. Any proposal received after this deadline will be rejected and returned unopened to the vendor.** Contractors mailing proposals must allow ample mail delivery time to ensure timely receipt of their proposals. It is the Contractors responsibility to ensure that the proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the proposal. Electronic mail and faxed proposals will not be accepted. Proposals which are not timely submitted shall be rejected and returned, unopened, to the Contractor.

2.8. Withdrawal of Proposals

- A. Time to Withdraw. Proposals may be withdrawn at any time prior to the deadline set for the receipt of proposals.

2.9. Proposal Opening

- A. The State will open proposals after **3:00 p.m., December 6, 2006**. The proposals will remain confidential until the Evaluation Committee has reviewed all of the proposals submitted in response to this RFP and the CJIS Advisory Committee has announced a notice of intent to award a contract.

2.10. Presentations

- A. Selected Contractors may be required to make a presentation of the proposal during the final evaluation stage. The presentation may occur at the State's offices, or another location chosen by the State. The determination as to the location, order, and schedule of the presentations and the Contractor(s) selected to present are at the sole discretion of the State. The presentation may include slides, graphics and other media selected by the Contractor to illustrate the Contractor's proposal. The presentation shall not materially change the information contained in the proposal. The presentations may be video recorded by the State and representations made by the Contractor during the presentation shall be considered part of the RFP proposal.

2.11. Proposal Announcement

- A. After 3:00 p.m. on December 5th, 2006, there shall be a public announcement of the names of the Contractors who submitted proposals properly accepted for evaluation. **This information will be posted on Iowa's CJIS web site.**

2.12. Award Notice and Acceptance Period

- A. Posting of Notice. Notice of intent to award the contract will be posted on the State's CJIS web site.
- B. Contracting Period. Negotiation of the contract shall be completed no later than **January 12, 2007**. If the apparent successful Contractor fails to negotiate and deliver an executed contract by **January 12, 2007**, the State may cancel the award and/or award the contract to another Contractor.

2.13. Preparation of the Proposal

- A. Drafting the Proposal
 - 1. Contractors must furnish all information necessary to evaluate the proposal. Proposals that fail to meet the mandatory requirements

of the RFP will be disqualified. Except as provided for by this RFP verbal information provided by the Contractor shall not be considered part of the Contractors proposal.

2. The "Official Proposal" shall be in ink or typewritten. Amendments shall be made using strikethrough (~~strikethrough~~) text, and each separate amendment shall be initialed. All amendments must be received before the proposal due date.
- B. Use of Provided Forms. All parts of this RFP require the use of the Response Forms that are included in the RFP document. Use of these Response Forms is **MANDATORY**. Unless otherwise instructed, do not retype these forms. If additional copies are needed, make additional copies on an office copy machine. Failure to use the response forms will be considered unresponsive and will result in the summary rejection of the Contractor's proposal.
- C. Packaging the Proposal
1. The sealed "Official Technical Proposal" and the separately sealed "Official Cost Proposal", containing the original signatures, nine (9) duplicate copies of each, plus separate soft copies on CD of each the Technical and Cost Proposal, in MS Word format, shall be delivered in a sealed package(s). Cost proposal materials shall be sealed and delivered separately from technical proposal materials. All sealed packages and CDs shall be clearly labeled on the outside of the package with the following information:
 - Name and Address of the Issuing Officer
 - Contractor's Name and Address
 - Contact Person and Telephone Number
 - Project Title and RFP Number
 - Proposal Due Date and Time
 - "Technical Proposal" or "Cost Proposal", as appropriate
 - "Original" or "Duplicate", as appropriate
 2. In addition, if multiple packages per proposal are used, the packages comprising the complete proposal shall be numbered in the following fashion (i.e., 1 of 4, 2 of 4, etc.).

2.14. Economy of Presentation

- A. Proposals shall not contain promotional or display materials. Proposals shall only address the requirements of this RFP. All questions posed by the RFP shall be answered concisely and clearly. Failure to comply with

this requirement may result in summary disqualification of the proposal.

2.15. Multiple Proposals

- A. The State is seeking proposals which meet its requirements as outlined in the RFP. If more than one method of meeting these requirements is proposed by the same Contractor, each should be labeled and submitted separately. Each proposal shall be evaluated separately.

2.16. Disposition of Proposal

- A. All proposals become the property of the State and shall not be returned to the Contractor unless all proposals are rejected or the RFP is cancelled. In either event, Contractors will be asked to send prepaid shipping instruments to the State for return of the proposals submitted. In the event the State does not receive shipping instruments, the State will destroy the proposals. Otherwise, at the conclusion of the selection process, the contents of all proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code Chapter 22 or other applicable law.

2.17. Rejection of Proposal

- A. Right to Reject. The State reserves the right to reject any or all proposals or any portion thereof without penalty at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the State to award a contract or to execute a binding contract with any Contractor that may be selected as a result of this RFP. The State further reserves the right to cancel this RFP, to issue a new RFP, to award a contract in whole or in part, to perform any or all of the services described in this RFP if it is in the best interests of the State. This RFP is designed to provide Contractors with the information necessary to prepare a competitive proposal. This RFP process is for the State's benefit and is intended to provide the State with competitive information to assist in the selection of a Contractor to provide services. It is not intended to be comprehensive and each vendor is responsible for determining all factors necessary for submission of a comprehensive proposal.
- B. Reasons for Rejection. Any proposal shall be rejected outright and not evaluated for any one of the following reasons:
- The Contractor fails to deliver the proposal by the due date and time.
 - The Contractor fails to deliver the cost proposal in a separate envelope.
 - The Contractor's response materially changes a service requirement.
 - The Contractor's response limits the rights of the State.

- The Contractor fails to include information necessary to substantiate that it will be able to meet a service requirement.
- The Contractor fails to respond to the State's request for information, documents, or references.
- The Contractor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in Chapter 4 of this RFP.
- The Contractor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- The Contractor violates any restriction imposed by this RFP.
- The Contractor provides misleading or inaccurate responses.
- The Contractor's proposal is materially unbalanced.
- Failure to include the required Response Form(s) signed by an officer of the company submitting the proposal.
- Failure to follow the proposal format instructions as specified in this RFP.
- Any other ground expressly stated in any part of this RFP.

2.18. Changes and Addenda

A. To the State's RFP.

1. Right to Amend. The State reserves the right to amend the RFP at any time. The Contractor shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of proposals, the State may, in its sole discretion, allow Contractors to amend their proposals in response to the State's amendment.
2. Response to Questions. The State shall prepare a written addendum in response to all pertinent questions and requests for interpretation which are timely received in written form by the issuing officer. The State reserves the right to change or otherwise amend this RFP at any time for any reason. **In the event it becomes necessary to revise any part of the RFP prior to scheduled submittal date, an addendum shall be issued to all Contractors by posting the addendum on the State's CJIS website. No other notification method will be used.**

- B. To the Contractor's Proposal. Amendments to proposals must be submitted following the same guidelines as the original proposal except that if a Contractor wishes to alter its proposal after submission to the State it may do so by submitting a "strikethrough" (~~strikethrough~~) version of its original proposal containing the desired changes. Failure to follow the strikethrough format may subject the vendor's amendment to disqualification. Further, amended proposals must meet the other packaging requirements of original proposals and must bear the word "Amendment" on the outside of the packaging. Amendments received after the designated date for original proposal submissions will be summarily rejected and returned, unopened, to the vendor. Electronic mail or fax amendments will not be accepted.

2.19. Certification of Independent Price Determination

- A. By submitting a proposal, each Contractor agrees that:
1. The prices in the proposal were arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any competitor.
 2. Unless otherwise required by law, the prices in the proposal have not been knowingly disclosed by any Contractor and shall not knowingly be disclosed by the Contractor prior to the notice of intent to award.
 3. No attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
- B. Each person signing a proposal certifies that (1 or 2, and 3):
1. He/she is the person in the Contractor's organization responsible within that organization for verifying the prices being offered herein, that he/she has not participated, and shall not participate, in any action contrary to 2.19 (A) herein; or
 2. He/she is not the person in the Contractor's organization responsible within the organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision making in certifying that such persons have not participated and shall not participate in any action contrary to 2.19 (A) herein, and as the Contractor's agent, does hereby so certify; and he/she has not participated, and shall not participate, in any action contrary to 2.19 (A) herein;

and

3. The signatory of the submitted proposal, and any clarifications to that proposal, is an officer of the offering firm or a designated agent empowered to bind the firm in a contract.

2.20. Copyrights

- A. By submitting a proposal, the Contractor agrees that the State may copy the proposal for purposes of facilitating the evaluation of the proposal or to respond to requests for public records. The Contractor consents to such copying by submitting a proposal and warrants that such copying will not violate the rights of any third party. The State will have the right to use ideas or adaptations of ideas which are presented in the proposals.

2.21. Public Records and Requests for Confidentiality

- A. Confidential Information. The State shall treat all information submitted by a Contractor as public information following the conclusion of the selection process unless the Contractor properly requests that information be treated as confidential at the time of submitting the proposal. The State's release of information is governed by Iowa Code Chapter 22. Contractors are encouraged to familiarize themselves with Chapter 22 before submitting a proposal. The State will copy, disclose and permit examination of public records as required to comply with the public records laws.
- B. Form of Request. Any request for confidential treatment of information must be included in the transmittal letter with the Contractor's proposal. In addition, the Contractor must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law, which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the Contractor to respond to any inquiries by the State concerning the confidential status of the materials.
- C. Marking as Confidential. Any proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire proposal as confidential may be deemed non-responsive and disqualify the Contractor.
- D. Excised Copy. If the Contractor designates any portion of the RFP as confidential, the Contractor must submit one copy of the proposal from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in section 4 of this RFP.

The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the proposal as possible.

- E. Limit of Confidentiality. The State will treat the information marked confidential as confidential information to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction.
- F. Notice of Release of Confidential Information. In the event the State receives a request for information marked confidential, written notice shall be given to the Contractor seven calendar days prior to the release of the information to allow the Contractor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.
- G. Waiver of Liability. The Contractor's failure to request confidential treatment of material will be deemed by the State as a waiver of any right to confidentiality, which the Contractor may have had.

2.22. Gratuities

- A. Restriction on Gratuities. Iowa Code Chapter 68B restricts gifts which may be given or received by state officers and employees and requires certain individuals to disclose information concerning their activities with state government. Contractors are responsible to determine the applicability of this Chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.
- B. Authorized Reimbursements. The State provides reimbursement to its employees for transportation, lodging, meals and miscellaneous expenses that are deemed necessary.

2.23. Security of Data

- A. Access to Confidential Information. Some State of Iowa data files and documents are of a highly confidential nature; therefore, Contractor's employees may be allowed access to this information only as needed for their duties relating to performance of the requirements of the contract. The Contractor shall have positive policies and procedures for safeguarding the confidentiality of such data, and may be liable under privacy legislation for negligent release of such information. The Contractor shall be aware that access to data and application code will be provided only to the extent permitted by State and Federal statutes and regulations. Contractor, its employees, agents, and assigns are required to sign and abide by all confidentiality forms provided by the State. The Contractor accepts sole responsible for ensuring that all of its employees, agents, and assigns abide by these agreements.

- B. Background Investigation. The Contractor **must**, at the discretion of the State, facilitate the State's performance of criminal history, background investigation, and fingerprint checks of any individual utilized by the Contractor, whether officers, directors, shareholders, or partners and including managerial and supervisory personnel retained by the Contractor for the performance of the contract, to be conducted by the Iowa Department of Public Safety. Failure to satisfactorily pass these investigations may subject any and all employees, sub-contractors, agents, partners, or other relationships of the successful Contractor to removal from the project or any other appropriate action up to and including contract termination, at the discretion of the CJIS Advisory Committee. The Contractor shall cause any and all waivers to be executed by the appropriate person to effectuate the investigation.

2.24. Conflicts Between Terms

- A. The State reserves the right to accept or reject any exception taken by the Contractor to the terms and conditions of this RFP. Should the successful Contractor take exception to the terms and conditions required by the State, the successful Contractor's exceptions may be rejected and the State may elect to void the award of contract. The State may elect to negotiate with the successful Contractor regarding contract terms which do not materially alter the substantive requirements of the RFP or the contents of the Contractor's proposal.

2.25. Proposal Evaluation and Award

- A. Review of Responses. All responses by a Contractor to the questions asked in this RFP are subject to verification. Misleading and/or inaccurate answers shall be grounds for disqualification of a Contractor at any stage in the procurement process, including cancellation of an awarded contract.
- B. Award of Contract. Any contract resulting from this RFP and subsequent evaluation process shall not necessarily be awarded to the Contractor with the lowest prices. Instead, the contract or contracts shall be awarded to the compliant Contractor who has the greatest number of points awarded as a result of the evaluation process, subject to the approval of the CJIS Advisory Committee whose decision will be binding and final.

2.26. Costs of Preparation of Proposal

- A. No payments shall be made to cover costs incurred by any Contractor in the preparation of the submission of this RFP or any other associated costs.

2.27. News Release

- A. News releases or other materials made available to the public, or to the

Contractor's clients or potential clients pertaining to this procurement, or any part of the proposal shall not be made without the prior written approval of the State.

2.28. Release of Claims

- A. With the submission of a proposal, each Contractor agrees that it will not bring any claim or have any cause of action against the State based on any misunderstanding concerning the information provided herein or concerning the State's failure, negligence or otherwise, to provide the Contractor with pertinent information as intended by this RFP.

2.29. Selection of Venue and Choice of Forum

- A. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this RFP and any resulting contract without regard to the choice of law provisions of Iowa law. Changes in applicable laws and rules may affect the award process or any resulting contract. Contractors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP or any resulting contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State.

2.30. Toolsets

- A. The toolsets involved with the implementation of the requirements of this RFP **must** be included as a deliverable under a perpetual, royalty-free license for use by an unlimited number of the State's employees or its agents in performing CJIS-related integration activities.

2.31. Miscellaneous

- A. Right of Independent Procurement. The State reserves the right to purchase any hardware, software, and adapters independent of other services identified in the proposal.
- B. Participation in Meetings.
 - 1. The Contractor **must** meet on a weekly basis, or more frequently as deemed necessary by the State, with the State's project manager and/or CJIS Advisory Committee.

2. The Contractor **must**, as necessary, participate in meetings scheduled by the State's project manager and/or CJIS Advisory Committee.
- C. Timely Information Required. Following Award of the contract, if additional information is required the Contractor **must** request it with sufficient lead-time as to not delay any part of the project schedule.
- D. Project Governance.
1. This technology project is under the direct control of the CJIS Advisory Committee established by the Governor and the Chief Justice of the Iowa Supreme Court. This committee may delegate specific technology related duties to various subcommittees made up of either CJIS Advisory Committee members and/or subject matter experts. Additionally, notwithstanding the scoring and evaluation provisions discussed elsewhere in this RFP, the final decision to award or not to award any contract pursuant to this RFP will be the responsibility of the CJIS Advisory Committee.
 2. The CJIS Advisory Committee shall assign a State Project Manager. Overall project management for the implementation of the services under this RFP may involve State staff, a Contractor already under contract with the State, or a combination of both.
 3. The assigned State's Project Manager will be responsible for contract compliance and shall report to the CJIS Advisory Committee.
 4. The Contractor's project manager **must** report to, and take direction from, the State's project manager.
- E. Substitution of Contractor Staff.
1. The Contractor's Project Principals shall not be substituted without prior written approval of the state's Project Manager. The State's project manager role may involve State staff, an independent Contractor currently under an existing contract with the State, or a combination of both.
 2. Contractor's project managers and staff must not be substituted without prior written approval of the State's Project Manager.
- F. Warranty Period Required. The State requires a warranty period after the programming and implementation of the nine exchanges articulated in The Plan has been completed. This warranty period must continue for at least one year following the date the State provides written notice of acceptance of the programming.

2.32. Milestone Payments

- A. The State's project manager shall authorize payment upon acceptable performance and completion of payment milestones.
- B. The State shall retain 15% of each milestone payment in accordance with Section 5.3 of the attached contract and the entire final payment until the State has approved and accepted the solution.
- C. Specific payment milestones and criteria will be determined by the State after identifying the successful Contractor. Examples of anticipated milestones include such things as; installation and configuration of the ESB and modeling tools, training and knowledge transfer to appropriate state staff, executing performance and scalability testing, etc.

2.33. Inquiries

- A. Time, Place and Manner. All inquiries concerning this RFP shall be submitted by **November 14, 2006**, in accordance with 2.5, in writing and only to the issuing officer.
- B. Verbal Representations. The State assumes no responsibility for verbal representations concerning conditions made by its officers or employees prior to the execution of a legal document, unless such representations are specifically incorporated into this RFP or written addenda to the RFP. Verbal discussions pertaining to modifications or clarifications of this RFP shall not be considered part of the RFP unless confirmed in writing. Any information provided by the Contractor verbally shall not be considered part of the Contractor's proposal. Only written communications from the Contractor and received by the State will be accepted.
- C. Outside Communication Prohibited. From the issue date of the RFP until announcement of the successful Contractor, Contractors may contact only the Issuing Officer or the Issuing Officer's designee with regard to the RFP. The Issuing Officer will respond only to questions regarding the procurement process and interpretation of the RFP. Questions related to the procurement process and interpretation of the RFP must be submitted in writing to the Issuing Officer by **4:30 p.m. on November 14, 2006**. Verbal questions related to the interpretation of this RFP will not be accepted. **Contractors may be disqualified if they contact any State employee other than the Issuing Officer or the Issuing Officer's designee.**

2.34. Downloading the RFP Amendments from the Internet

- A. All amendments will be posted on the Internet at Iowa's CJIS website.

2.35. Questions, Requests for Clarification, and Suggested Changes

- A. Submission of Questions. Contractors are invited to submit written questions and requests for clarifications regarding the RFP. Contractors may also submit suggestions for changes to the requirements of this RFP. The questions, requests for clarifications, or suggestions must be in writing, by mail, fax or email, and received by the Issuing Officer before **4:30 p.m. November 14, 2006**. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, the page and section number(s) must be referenced. Written responses to questions, requests for clarifications, or suggestions will be posted on the State's CJIS web site on or before **November 21, 2006**. The State's written responses will be considered part of the RFP, and may be adopted as an amendment to the RFP.

- B. Release of Liability. The State assumes no responsibility for verbal representations concerning conditions made by its officers or employees prior to the execution of a legal document, unless such representations are specifically incorporated into this RFP or written addenda to the RFP. Verbal discussions pertaining to modifications or clarifications of this RFP shall not be considered part of the RFP unless confirmed in writing. Any information provided by the Contractor verbally shall not be considered part of the Contractor's proposal. Only written communications from the Contractor and received by the State will be accepted.

- C. Questions to Contractor. The State reserves the right to contact a Contractor after the submission of proposals for the purpose of clarifying a proposal to ensure mutual understanding. This contact may include written questions, interviews, demonstrations, site visits, a review of past performance if the Contractor has provided goods or services to the State or any other political subdivision wherever located, or requests for corrective pages in the Contractor's proposal. The State will not consider information received if the information materially alters the content of the proposal or alters the type of goods and services the Contractor is offering to the State. An individual authorized to legally bind the Contractor shall sign responses to any request for clarification. Responses shall be submitted to the State within the time specified in the State's request. Failure to comply with requests for additional information may result in rejection of the proposal as non-compliant.

2.36. Nonmaterial and Material Variances

- A. Right to Waive. The State reserves the right to waive or permit cure of nonmaterial variances in the proposal if, in the judgment of the State, it is in the State's best interest to do so. In the event the State waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the Contractor from full compliance with RFP specifications or other contract requirements if the Contractor is awarded the contract. The determination of materiality is in the sole

discretion of the State.

2.37. Reference Checks

- A. The State reserves the right to contact any reference to assist in the evaluation of the proposal, to verify information contained in the proposal and to discuss the Contractor's qualifications and the qualifications of any subcontractor identified in the proposal.

2.38. Information From Other Sources

- A. The State reserves the right to obtain and consider information from other sources concerning a Contractor, such as the Contractor's capability, financial strength and performance under other contracts.

2.39. Contract Length

- A. Initial Contract. The term of the initial contract shall be three (3) years and will commence upon execution of the contract.
- B. Renewal. The State shall have the option to renew the contract for three (3) one-year periods, if the State determines it is in its best interest to do so.

CHAPTER 3 – MANDATORY REQUIREMENTS

TABLE OF CONTENTS

Chapter Purpose	27
Requisite Experience	27
Mandatory Technical Proposal Requirements	27
Technical Requirements.....	27
Additional Technical Proposal Requirements	28
Mandatory Technological Requirements	29
Requirements for implementing the technology.....	29
Integration Requirements	30
Data Standards and Requirements	30
Architecture & Technology Requirements	31
Web Services Requirements	32
Management, Access and Control	32
Security	32
Encryption requirements.....	32
Network Requirements	33
Mandatory Non-technological Requirements	34
Software Toolsets.	34
Additional Requirements Directed to the Technical Proposal	34
Qualifications and Experience Required of the Contractor firm:	34
Requirements for Project Principals	34
Requirements for Contractor Staff	35
Work Plan.....	35
Requirements Specifically Directed to the Cost Proposal.....	37
Cost Estimates	37

3.0. Chapter Purpose

- A. The purpose of this Chapter is to identify the mandatory requirements and conditions a proposal **must** fulfill before any consideration will be given. Each statement requires a positive response by providing confirmation and/or the information requested. Describe in detail how your proposal complies with each mandatory requirement. Proposals **must** meet the mandatory requirements detailed below.

3.1. Requisite Experience.

- A. The Contractor **must** have successfully implemented a solution similar to that described in The Plan.
- B. Staff assigned by the Contractor **must** possess cumulative information system integration experience for developing a specific technological solution consistent with The Plan and defining appropriate strategies and processes necessary to integrate State and local CJIS systems.
- C. The Contractor's Project Manager **must** be qualified to perform the tasks required and of a management level sufficient to assure timely responses from all Contractor personnel, the timely completion of tasks and the achievement of milestones.

3.2. Mandatory Technical Proposal Requirements

- A. Technical Requirements. The Contractor's Technical Proposal must articulate how its solution satisfies each of the following:
 - 1. The successful Contractor **must** deliver a technical environment necessary to integrate state and local CJIS systems and databases. This environment must be consistent with the technologies and strategies as defined in The Plan.
 - 2. The technology **must** achieve the benefits of integration as expressed in The Plan.
 - 3. The technology **must** leverage existing infrastructure and capability in the current Iowa technology environment as identified in The Plan.
 - 4. The technology proposed **must** be focused on enhancing the business practices being utilized by justice practitioners in Iowa and should not be the driving force in the justice communities' business flow. A general guideline on the flow of information within Iowa's justice community can be found at: http://www.cjis.iowa.gov/images/pdf/Iowa_Adult_Criminal_Justic

e_Exchange_Final_Report.pdf.

5. The technology **must** utilize a service oriented architecture (SOA) and web services as its central premise.
6. The technology **must** utilize an ESB to facilitate information sharing between agencies.
7. The technology **must** utilize the State's Iowa Communications Network (ICN) data circuits where allowable by statute.
8. The technology **must** utilize the Global Justice Exchange Data Model (GJXDM) as the data standard for information exchange.
9. This technology **must** address the independent and disparate CJIS environment in the State as discussed in The Plan.
10. Each Mandatory Technological Requirement defined in this RFP, including those defined in Section 3.2.

B. Additional Technical Proposal Requirements

1. The proposed solution **must** clearly articulate how the solution proposed will provide maximum security for the users and transactions involved. The current State Enterprise Security Guidelines are located at http://das.ite.iowa.gov/standards/enterprise_it/12_security.html. These standards may be referenced for developing a base level of security, but are ever evolving and are subject to change.
2. The proposal **must** disclose the operating environments required for the proposed implementation at both an ESB and a CJIS participant-level.
3. The proposal **must** not be technologically inconsistent with the recommendations contained in The Plan.
4. The proposal **must** include the specifications of the proposed hardware, software and adapters necessary to implement CJIS in Iowa. In fulfilling this requirement, the Contractor **must** indicate in which items it proposes to provide under the contract and which items it expects the State will have or procure separately from the awarded contract.
5. The proposal **must** separately describe the methodology, development tools, or procedures which will be used to facilitate the State's implementation of the technology.

3.3. Mandatory Technological Requirements

A. Requirements for implementing the technology.

1. The proposed infrastructure **must** provide this functionality with as little impact as possible upon the current applications being utilized for support of participating criminal justice agencies' business processes.
2. The proposed technology **must** utilize and support web services and the SOA model and be open, reusable, cost effective, minimize the impact on partners, enhance the management of growth in the number of interfaces and support SOA technologies including, but not necessarily limited to, SOAP, WSDL, and UDDI. Therefore:
 - (a) The proposed technology **must** provide for the implementation of a single, centrally managed ESB to maintain critical enterprise functions and business process management as well as to provide transaction-based processing. At a minimum, this ESB **must**:
 - (i) be able to provide for the translation of code values, managing charge statutes, transformation services, establish case and charge tracking numbers, subscription and notification services, and logging and auditing functions;
 - (ii) consist of a variety of components including a user interface, application servers, persistent data storage;
 - (iii) be scaleable with respect to increased transaction volume; and
 - (iv) offer stability in balancing high volume transaction loads, provide redundancy with failover protection at a server and network device level, and optimize utilization of acquired resources by implementing a clustered solution.
3. The proposed technology **must** provide for secure access to transactions over the public internet for those agencies where this type of methodology is deemed appropriate.
4. While this proposal should only involve the nine information exchanges discussed previously the solution **must** be technologically capable of being used to implement additional phases of information exchanges in the future.

5. The proposal **must** include the ability to send and receive transactions between loosely coupled systems. This will require the use of a transaction exchange layer. The exchange layer used in the proposal **must** consist of
 - (a) A re-usable, bi-directional, adapter framework, or interface environment, in which data exchanges can be sent from the participating application and received from other participating applications; and
 - (b) A business processing layer that has the ability to know when to generate data exchange, and how to process data exchanges received from outside entities according to business rules of the agency it supports.

B. Integration Requirements

1. The proposal **must** include building, implementing, and acceptance testing involving, at a minimum, the following nine information exchanges, whose IEPDs have already been developed:
 - (a) arrest warrant
 - (b) citation
 - (c) complaint
 - (d) OWI complaint
 - (e) incident report
 - (f) protective order
 - (g) trial information
 - (h) pre-sentence investigations, and
 - (i) sentencing orders.
2. Additional IEPDs may be delivered to the successful Contractor during the course of the contract for integration by the Contractor. The solution **must**, however, where feasible, allow the State to implement exchanges using the IEPDs without Contractor assistance or intervention.

C. Data Standards and Requirements

1. The proposed technology **must** utilize XML mapped to the GJXDM for transferring payload information between endpoints.

2. The technology **must** incorporate a contractor-developed uniform and enterprise-wide solution to uniquely identify individuals (i.e., Defendants) within the criminal justice system.

D. Architecture & Technology Requirements

1. The proposed architecture **must** flexibly adapt to, integrate and utilize ever-evolving policies, best practices, and operating procedures from CJIS integration participants.
2. The proposed architecture **must** achieve CJIS integration via web based technologies that at a minimum include the following architectural components:
 - (a) web services
 - (b) data access and control
 - (c) security
 - (d) confidentiality
 - (e) management and control; and
 - (f) networking.
3. While this RFP represents the first phase of the State's CJIS project, the proposed solution **must** have the potential to be scaled in the future such that additional resources could be acquired and attached to the system easily, allowing other agencies to participate. Options for horizontal and vertical scalability are encouraged with the intent that at a future time, the proposed solution may be expanded to function with a broader range of users.
4. The proposed architecture **must** be scalable and must provide a minimum of 99.99% ESB server availability. ESB server availability is defined as the availability of the operating system and server hardware used to support the ESB excluding factors outside the control of the proposed solution such as facilities and/or internet service provider outages. Options and recommendations for measuring and reporting on availability as defined are encouraged. A factor to consider in architecture design includes the availability of a primary data center with secondary, geographically remote site for disaster recovery and business continuity.

5. The proposed architecture **must** include separate development, test, and production environments.

E. Web Services Requirements

1. The Contractor's proposed solution **must** be based on open architecture standards and support a distributed computer environment.
2. The proposed solution **must** provide for secure data exchange and access between CJIS participants and/or the ESB via the internet. This may be via VPN or any other common methodology. The solution for achieving this business need should be proposed by the Contractor. The State, in its discretion, will deem particular methodologies acceptable or unacceptable *only after* proposals are submitted.
3. The proposed solution **must** include request/reply, publish/subscribe, and synchronous/asynchronous functionality to facilitate the information sharing between CJIS participants and/or the ESB.
4. The proposed solution **must** utilize web services via standard software components used to perform distributed computing employing technologies such as SOAP, WSDL, and UDDI.

F. Management, Access and Control

1. The proposed solution **must** be widely compatible with existing applications and operating environments.
2. The proposed solution **must** support access and control for information exchange.
3. The proposed solution **must** ensure that user identification and authentication can take place at the network, device, application, and/or device/software level. At a minimum, a user shall be restricted from establishing a secure data exchange without first being identified/authenticated by no less than a user id and password.
4. The security included in the proposed solution **must** be scalable and capable of being configured to accommodate different levels of security on a per user, per application, or per endpoint basis.

G. Security

1. Encryption requirements

- (a) The proposed solution **must** ensure that all CJIS network data crossing over a public network segment or over dial-up or Internet connections includes at least 128 bit encryption utilizing FIPS 140-2 compliant modules. Public networks being defined as any network equipment or data transmission line that is NOT in direct control of the law enforcement of the state.
 - (b) The proposed solution **must** incorporate secure data exchange mechanisms and technologies such as cryptography, key management, access control, authentication, and data integrity where appropriate.
 - (c) The proposed solution **must** conform to Internet Engineering Task Force (IETF) Internet Protocol Security (IPSEC) Encapsulating Security Payload (ESP) protocol as specified in RFC 2406. The solution **must** be capable of utilizing cryptographic modules that are compliant with Federal Information Processing System (FIPS).
 - (d) The proposed solution **must** recognize the additional security requirements from CJIS agencies or departments requiring encryption in excess of this 128 bit encryption utilizing (FIPS 140-2 compliance above) minimum such as the national Crime Information Center (NCIC) CJIS Security Policy.
 - (e) The proposed solution **must** require a minimum of 128 encryption with NIST, CSL certification of the cryptographic module to ensure it meets FIPS Publication 140-2 for "Security Requirements for Cryptographic Modules." Systems that transmit data over radio frequencies to a network with access to CJIS data must also be subject to this encryption requirement.
- 2. The proposed solution **must** utilize credentials and authentication.
 - 3. The contractor is invited to *propose* implementation of a particular web services security standard, but the Contractor **must** clearly articulate the standard, which components of the standard will be implemented, and how each component fulfils a technological or business requirement of this RFP or The Plan.

H. Network Requirements

- 1. The proposed solution **must** be capable of utilizing the State's existing infrastructure to establish a framework for criminal justice information sharing making use of the Iowa Communications

Network data circuits where feasible and the public internet where appropriate.

2. The proposed solution **must** be capable of utilizing “Data Transfer Facilities”.
3. The solution **must** be capable of transferring large data sets.

3.4. Mandatory Non-technological Requirements

A. Software Toolsets.

1. The Technical Proposal **must** specifically identify the tools to be used and delivered and specify the hardware and software requirements for operating the tool and should specify what support will be provided to users of the toolsets.
2. The Cost Proposal **must** specifically delimit any separate cost associated with the tool sets, whether initial costs or maintenance cost. If the toolsets are to be provided without additional cost, the Cost Proposal must so state.

- B. The Technical Proposal and Cost Proposal **must** indicate whether the Contractor or Contractors seek an award (1) for implementing an ESB Platform, (2) for implementing the required integration, (3) for implementing a suitable adapter framework, or some combination of the three. If a proposal covers more than one category, the costs associated for each of these three categories **must** be separately and clearly identified in the Cost Proposal.

C. Additional Requirements Directed to the Technical Proposal

1. Qualifications and Experience Required of the Contractor firm:
 - (a) The Contractor **must** provide basic corporate and sub-contractor information to include, but not be limited to, ownership, size, relationship with larger owner, financial resources, date of incorporation, and staffing locations.
 - (b) At least three (3) references (with project name and location, contact person with telephone and FAX numbers and email address) must be included in the proposal. Sub-contractors and their experience must be included.
2. Requirements for Project Principals
 - (a) The Contractor’s proposed Project Principals **must** be identified in the proposal.

- (b) Proposals must include resumes for the Contractor's Project Principals and **must**, at a minimum, include the following:
 - (i) Academic background and degrees.
 - (ii) Professional certifications.
 - (iii) Previous participation and experience in CJIS integration and associated aspects, if any.
 - (iv) Previous management of CJIS technology development, if any.
 - (v) Previous experience with management of sub-contractor staff.
 - (vi) At least three (3) business/professional references to include: names of contacts, titles, addresses, telephone and FAX numbers.

3. Requirements for Contractor Staff

- (a) The Project Manager and staff **must** be identified in the proposal.
- (b) Proposals **must** include resumes for the contractor's Project Manager and Staff, and **must**, at a minimum, include the following
 - (i) Academic background and degrees.
 - (ii) Professional certifications.
 - (iii) Previous participation and experience in system integration and associated aspects, if any.
 - (iv) Project management experience and/or associated responsibilities related to technology development, if any.
 - (v) Previous experience with management of sub-contractor staff, if any.
 - (vi) At least three (3) business/professional references to include: names of contacts, titles, addresses, telephone and FAX numbers and email addresses.

4. Work Plan

- (a) The Contractor's Technical Proposal **must** include a detailed Work Plan explaining how the Contractor intends to complete and obtain acceptance of their proposed technology and the requirements of this RFP. The Work Plan **must** include, but is not limited to:
 - (i) A statement of project understanding affirming:
 - [1] Comprehension and compliance with the Project Description identified in Section 1.1 and each provision of the RFP.
 - [2] Awareness of the State's requirements and intended use of the services and technology as set forth in the RFP.
 - [3] That the deliverables shall satisfy the RFP requirements in all respects and be fit for such intended uses.
 - (ii) A detailed schedule based on the number of days and/or weeks required for completing the technological environment and having one of the nine exchanges fully functional and accepted by the CJIS Advisory Committee not later than **April 1, 2007**. This first exchange **must** involve either the Electronic Citation Component (ECCO) exchange or the Operating While Intoxicated (OWI) exchange. Additionally, the schedule must also include the plan for implementing the other eight exchanges not later than **August 1, 2007**. Information on all nine exchanges is listed on the State's CJIS website.
 - (iii) A detailed breakdown of the proposed work structure, including activities, tasks, performance review, payment milestones/criteria, and objectives to provide the services and deliverables required to complete the technology environment Plan and obtaining the CJIS Advisory Committee's acceptance.
 - (iv) Identification of task relationships, overlap, and dependencies.
 - (v) A detailed breakdown of staff resources assigned to the project, including number of staff and the percentage of time for each.

- (vi) A detailed responsibility matrix for Contractor and State staff.
 - (vii) Start and ending dates for each task.
 - (viii) Articulation of the approach to coordinating the responsibilities of the State staff with those of the Contractor/sub-contractor to ensure overall project success.
 - (ix) A description of how the Project shall be managed, prioritized, and controlled. This must include the Project management structure (with organizational chart) and the method of Project status reporting.
 - (x) A Project Change Control Plan for controlling the project and prioritizing State and Contractor change requests.
5. The Technical Proposal **must** include an Acceptance Plan for obtaining State's acceptance of each deliverable.
 6. The Technical Proposal **must** include the format of and an example of the Status Report to be used throughout the project.

D. Requirements Specifically Directed to the Cost Proposal

1. The proposal **must** include the separate cost of implementing each of the nine exchanges.
2. The Cost Proposal **must** include an all-inclusive (including all travel, expenses, etc.), itemized, not-to-exceed total cost, in U.S. Dollars, to provide the requested items and services.
3. The Cost Proposal **must** include an annualized breakdown of the total cost of ownership (TCO) projected forward five (5) years from the date the contract is awarded. The breakdown must list separately, at a minimum, new costs, recurring costs, and maintenance costs.
4. The proposal **must** include the specifications of the proposed hardware, software and adapters necessary to implement CJIS in Iowa. The Contractor **must** indicate in this section which items it proposed to provide under the contract and which items it expects the State will have or procure separately from the awarded contract. The State reserves the right to purchase any hardware, software, and adapters independent of other services identified in the proposal.
5. Cost Estimates

- (a) The Contractor **must** provide specific estimated costs for the State to implement each proposed phase of the integration implementation schedule identified in the Contractor's Work Plan, broken down by the architectural solutions recommended.
- (b) Cost estimates **must** include separate headings for, at a minimum
 - (i) hardware procurement
 - (ii) hardware maintenance
 - (iii) operating system procurement
 - (iv) operating system maintenance
 - (v) ESB software procurement
 - (vi) ESB software maintenance
 - (vii) adapter framework procurement
 - (viii) adapter framework maintenance; and
 - (ix) any additional headings deemed appropriate.
- (c) Cost estimates **must** also include the cost of implementing all nine exchanges.
 - (i) These costs **must** be broken down by individual exchange.
 - (ii) Cost estimates **must** also identify the cost associated with maintaining the exchanges once they are implemented.

**CHAPTER 4 – PROPOSAL FORMAT AND EVALUATION
CRITERIA**

TABLE OF CONTENTS

Chapter Purpose.....40

Instructions40

Proposal Contents40

 Costs Evaluated Separately.40

 Technical Proposal.40

 Cost Proposal.41

Evaluation Process.....42

4.0. Chapter Purpose

- A. The purpose of this Chapter is to provide detailed instructions regarding what papers should be included in the Technical and Cost proposals and in what order those documents should be placed.

4.1. Instructions

- A. The contents of the proposal shall be as defined in paragraph 4.2. Failure to adhere to these instructions shall cause rejection of the Contractor's proposal.
- B. The proposal shall be packaged and delivered as described in this RFP.

4.2. Proposal Contents

- A. Costs Evaluated Separately. All Cost Proposals will remain unopened and separated from the Technical Proposals until the committee has completed its evaluation of the Technical Proposals. **No pricing information shall be included in the Technical Proposal. All pricing information shall appear only in the separately sealed Cost Proposal.**
- B. Technical Proposal. The technical proposal must include, at a minimum, the following items in the order below.
 - 1. Cover or Title Page including RFP Reference Number, appropriately marked whether it is the Original, a Duplicate, or a "Public Copy".
 - 2. Letter of Transmittal.
 - (a) The Contractor's letter of transmittal must be signed by an officer with the authority to bind the Contractor to providing the services proposed.
 - 3. Table of Contents
 - 4. Executive Summary
 - 5. Administrative, Contractual, Service Requirements and Contractor Information
 - 6. Statement of Understanding.
 - (a) The prospective Contractor shall provide a positive statement with respect to Chapter 2 of the RFP by stating that the prospective Contractor has read, understands and

will comply with the contents.

- (b) Failure to provide a statement will be deemed acceptance by the prospective Contractor of the terms and conditions as stated.
- (c) The prospective Contractor may take exception to the terms and conditions as required by the State; however, the prospective Contractor's exceptions may be rejected and the entire proposal deemed non-responsive.
- (d) The State may elect to negotiate with the successful Contractor(s) regarding contractual terms and conditions which do not materially alter the substantive requirements of the proposal or the prospective Contractor's response to the RFP.

7. Acceptance of Terms and Conditions.

- (a) The Contractor shall specifically agree that the proposal is predicated upon the acceptance of all terms and conditions stated in the RFP, including the terms and conditions contained in the attachments, except attachments 5 and 6.
- (b) However, the Contractor shall agree that the contents of attachments 5 and 6 will be negotiated prior to contract execution. Attachments 5 and 6 will provide the starting point for negotiations.
- (c) If the Contractor objects to any term or condition, the Contractor must specifically refer to the RFP or attachment page, and section. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the Contractor.

8. Technical Requirements Understanding. The Contractor shall provide the information requested and/or a positive statement of compliance with respect to each subsection of Chapter 3.

9. Signed Attachments 1 through 4.

10. A soft copy of the Technical Proposal on a separate CD included with each copy of the Proposal.

C. Cost Proposal. Cost Proposals shall not be marked confidential. The separately sealed Cost Proposal shall consist of the following documents and responses:

1. Cover or Title Page including RFP Reference Number, appropriately marked whether it is the Original, a Duplicate, or a "Public Copy".
2. Letter of Transmittal.
 - (a) The Contractor's letter of transmittal must be signed by an officer with the authority to bind the Contractor to providing the services proposed.
3. Table of Contents
4. Letter Binding Prospective Contractor to Proposed Costs. The prospective Contractor shall include a letter binding the prospective Contractor to its proposed Costs by providing a statement that the costs quoted will be binding and unchangeable for a period of not less than 180 days from the due date of the proposal.
5. Certification of Independent Price Determination as required by section 2.19 of this RFP.
6. The Cost Proposal, following the format specified in Attachments 8 and 9.
7. A soft copy of the Cost Proposal on a separate CD included with each copy of the proposal.

4.3. Evaluation Process

- A. The Issuing Officer shall receive all Technical and Cost Proposals by the designated time. All Cost Proposals will remain unopened and separated from the Technical Proposals until the committee has completed its evaluation of the Technical Proposals.
- B. The State will review Technical Proposals and unopened Cost Proposals for any issue identified in section 2.17 (rejection of proposals section).
- C. Remaining Proposals will be further evaluated based on scoring criteria established and distributed to the State's Evaluation Committee prior to the deadline for submitting proposals. The scoring criteria will be posted on the State's CJIS website after the deadline for submitting proposals has passed.
- D. Notice will be posted in conformance with the relevant sections of Chapter 2 of this RFP.

CHAPTER 5 – ATTACHMENTS

TABLE OF CONTENTS

ATTACHMENT 1 – PROPOSAL CERTIFICATION	44
ATTACHMENT 2 – CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST	45
ATTACHMENT 3 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS	46
ATTACHMENT 4 – AUTHORIZATION TO RELEASE INFORMATION	48
ATTACHMENT 5 – SAMPLE SERVICES CONTRACT.....	49
ATTACHMENT 6 – SAMPLE SOFTWARE LICENSING AGREEMENT	78
ATTACHMENT 7 – TECHNICAL PROPOSAL RESPONSE FORM.....	96
ATTACHMENT 8 – COST PROPOSAL RESPONSE FORM	97
ATTACHMENT 9 – MANDATORY COST PROPOSAL FORMAT	98

ATTACHMENT 1 – PROPOSAL CERTIFICATION

SIGN AND SUBMIT THIS CERTIFICATION WITH TECHNICAL PROPOSAL.

PROPOSAL CERTIFICATION

I certify that I have the authority to bind the Contractor indicated below to the specific terms, conditions and technical specifications required in the attached Request for Proposal No. _____ and offered in the Contractor's proposal. I understand that by submitting this proposal, the Contractor indicated below agrees to provide the services, which meet or exceed the requirements of the RFP unless noted in the proposal and at the prices quoted by the Contractor.

I certify that the contents of the proposal are true and accurate and that the Contractor has not knowingly made any false or misleading statements in the proposal.

Signature:

Date:

Printed Name and Title

Name of Contractor Organization

ATTACHMENT 2 – CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST

SIGN AND SUBMIT THIS CERTIFICATION WITH TECHNICAL PROPOSAL.

CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST

By submission of a proposal in response to RFP No., the Contractor certifies (and in the case of a joint proposal, each party thereto certifies) that the proposal has been developed independently, without consultation, communication or agreement with any employee or consultant of CJJP, the Judicial Branch or the Executive Branch, who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee; the proposal has been developed independently, without consultation, communication or agreement with any other Contractors or parties for the purpose of restricting competition; unless otherwise required by law, the information in the proposal has not been knowingly disclosed by the Contractor and will not knowingly be disclosed prior to the award of the contract, directly or indirectly, to any other Contractor; no attempt has been made or will be made by the Contractor to induce any other Contractor to submit or not to submit a proposal for the purpose of restricting competition; no relationship exists or will exist during the contract period between the Contractor and CJJP that interferes with fair competition or is a conflict of interest.

Signature:

Date:

Printed Name and Title

Name of Contractor Organization

ATTACHMENT 3 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION— LOWER TIER COVERED TRANSACTIONS

SIGN AND SUBMIT THIS CERTIFICATION WITH TECHNICAL PROPOSAL.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

By signing and submitting this Proposal in response to RFP No., the Contractor is providing the certification set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the department or State with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The Contractor shall provide immediate written notice to the person to which this Proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
4. The Contractor agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or State with which this transaction originated.
5. The Contractor further agrees by submitting this Proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for

debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or State with which this transaction originated may pursue available remedies, including suspension and/or debarment.

- (1) The Contractor certifies, by submission of this Proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or State.
- (2) Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this Proposal.

Signature:

Date:

Printed Name and Title

Name of Contractor Organization

ATTACHMENT 4 – AUTHORIZATION TO RELEASE INFORMATION

PROSPECTIVE CONTRACTORS – SIGN AND SUBMIT CERTIFICATION WITH TECHNICAL PROPOSAL.

AUTHORIZATION TO RELEASE INFORMATION

_____ (Name of Contractor) hereby authorizes any person or entity, public or private, having any information concerning the Contractor's background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in RFP No., to release such information to CJJP.

The Contractor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Contractor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from CJJP or may otherwise hurt its reputation or operations.

The Contractor is willing to take that risk. The Contractor agrees to release all persons, entities, CJJP, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

Printed Name of Contractor Organization

Signature of Authorized Representative

Date

Printed Name and Title

ATTACHMENT 5 – SAMPLE SERVICES CONTRACT

SAMPLE SERVICES CONTRACT

This Agreement for professional services and other deliverables (this “Agreement”), made and effective as of December , 2006 (“Effective Date”), by and between the State of Iowa, acting by and through the Iowa Department of Human Rights (“Department”) and [name of Vendor], a [corporation] organized under the laws of [] (“Vendor”). The parties agree as follows:

Section 1. Purpose and Term.

1.1 Purpose. The parties have entered into this Agreement for the purpose of retaining Vendor to provide professional services and other deliverables in connection with the development and implementation of a centralized, real-time, Enterprise Service Bus for the Department and the State of Iowa (the “State”), as more fully described in this Agreement, including RFP #_____ and the Statement of Work..

1.2 Term. The initial term of this Agreement is from December , 2006, through December , 2009, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the Department shall have the option to extend/renew this Agreement for up to three additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of the Department and may be exercised by the Department by providing written notice to Vendor.

Section 2. Definitions.

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

“Acceptance” means that the Department has determined that one or more Deliverables satisfy the Department’s Acceptance Tests. Final Acceptance means that the Department has determined that all Deliverables and the ESB satisfy the Department’s Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department’s Acceptance Tests.

“Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Department and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

“Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of Department to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Department, as determined by the Department in its sole discretion. Acceptance Testing may include testing of individual or multiple units, modules or components, system or integration testing, user-acceptance testing, load/stress testing, system security testing, network testing, recovery/backup testing, data transfer, migration and conversion testing, and Documentation review.

“Adapter” means a software solution that provides connectivity to applications that are external to the ESB.

“Authorized Contractors” means independent contractors, consultants or other Third Parties who are retained or hired by the State, the Department or any other Governmental Entity of the State to use,

maintain, support, modify, or enhance the ESB or the Criminal Justice Information System or to otherwise assist Department with its use of the ESB or the Criminal Justice Information System for other purposes.

“Confidential Information” means, means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “disclosing party”) to the other party (a “receiving party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party; (ii) was known to the receiving party prior to the disclosure of the information by the disclosing party; (iii) was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the receiving party in violation of this Agreement or in breach of any other agreement with the disclosing party; (v) is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the receiving party with the written consent of the disclosing party.

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

“Deliverables” mean the ESB, Adapters, Software, Source Code, Documentation, hardware, goods, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor (or any agent, contractor or subcontractor of Vendor) in connection with this Agreement, and all related legal rights to own or use the same. Except as otherwise provided in this Agreement, Deliverables shall include any and all: inventions, ideas, concepts, discoveries, methodologies, processes, applications, programs, software, source code, object code, and any other code, language or programming in any stage of development, improvements, modifications, enhancements, upgrades, releases, works-in-progress, techniques, know-how, designs, creative works and original works of authorship, work product, derivative works, Specifications, data, databases, compositions of matter, drawings, notes, plans, papers, graphics, copy, artwork, images, templates, forms, reports, studies, screen designs, utilities, routines, tests, devices, materials, documents, information, content, and all other tangible and intangible works, materials and property of any kind and nature that are related to the Deliverables or created, developed, produced, delivered, or provided by or on behalf of, or made available through, Vendor (or any agent, contractor, subcontractor, subsidiary or affiliate of Vendor) in connection with this Agreement.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Enhancements” shall mean any and all updates, upgrades, patches, additions, modifications or other enhancements made by Vendor with respect to the Software, any new Vendor releases of Software, and all changes to the Documentation and Source Code made by Vendor as a result of such Enhancements.

“Enterprise Service Bus” or “ESB” means software that provides a centralized, standard interface between information exchange partners, allowing them to send data back and forth to each other synchronously or asynchronously. Further, an ESB must include Quality-of-Service (QoS) and Operational Management features.

“Governmental Entity” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4) (2005), or any successor provision to that section. The term Governmental Entity shall also include agencies, independent agencies, departments, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, offices of elective constitutional or statutory officers, and other units or entities of government.

“Project” means the project to develop and implement the ESB and specified information exchanges and all services and Deliverables to be performed and provided by Vendor as described in this Agreement.

“Project Completion Date” means the date by which Vendor must complete all work and provide all Deliverables pursuant to this Agreement. For purposes of this Agreement, the Project Completion Date is _____.

“Project Plan” means the Project Plan attached hereto as Schedule B, as modified from time to time upon written agreement of the parties. The Project Plan is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

“Software” means the [describe specific software products] and all other software, programs, applications and components listed in Schedule A, in all forms, including Source Code and object code, all related Documentation and Enhancements, and all copies of the foregoing.]

“Software License Agreement” means the Software License Agreement by and between Vendor and the Department dated _____.

“Source Code” means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to any program, application or software (including the Software). Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing or making modifications or enhancements to any source code, program, application or software (including the Software).

2.15 “Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Agreement, the Software License Agreement, Documentation, the RFP (as defined below), and the Proposal (as defined below). Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. Specifications shall include, without limitation, the existing and planned data model for the ESB, including all data elements, logical relationships and an entity relationship diagram, the functional requirements specifications and a functional design for the ESB, including descriptions of each ESB function and a functional hierarchy diagram, a definition of the existing and planned ESB modules,

including a diagram showing the system design, interface design document including descriptions of all internal and external interfaces, final specifications of the ESB architecture, including hardware, software and operating system for all system components and interfaces, the detailed ESB security plan, detailed business and technical requirements, detailed system planning & design, functional hierarchy diagram, entity relationship diagram, data conversion and migration protocols, Software and hardware configuration plan, and duplicate voter check plan.] The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

“Statement of Work” means Schedule A to this Agreement, which describes, among other things, the Deliverables and services to be provided by Vendor under this Agreement and the fixed, not-to-exceed compensation and final delivery dates associated therewith. Each Statement of Work will also include, without limitation, a description of the Vendor personnel or teams that will complete the work, including each Vendor’s personnel’s roles and responsibilities; a resource allocation plan; a detailed work breakdown structure; a communication plan; a configuration management plan; a risk management plan; and detailed business and technical requirements. The Statement of Work is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

“Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

“Third Party Software” means software, firmware and other programs developed or acquired from parties other than Vendor. [Third Party Software shall/shall not be considered Software under this Agreement.]

Section 3. Documents Incorporated.

3.1 Incorporation. The Department’s Request for Proposal No. _____ for State of Iowa Criminal Justice Information System (CJIS) Enterprise Service Bus (“RFP”) and Vendor’s proposal dated _____, in response to the RFP (“Proposal”), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor’s proposed revisions or modifications to the sample Services Contract and sample Software License Agreement attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

3.2 Contractual Obligations. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any proposed revisions or modifications made by Vendor to the sample Services Contract and sample Software License Agreement attached to the RFP Proposal shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the Department hereunder, unless expressly stated herein.

3.3 Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

3.4 No Inconsistency. The references to the parties’ obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual

obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the Department shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the Department.

Section 4. Scope of Work.

4.1 Statement of Work. Vendor shall provide the Department with the Deliverables in accordance with the Statement of Work (Schedule A) and all other terms and conditions of this Agreement.

4.2 Amendments to Statement of Work. The parties agree that the Statement of Work may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of the parties.

4.3 Delivery. Vendor shall deliver to the Department all Deliverables, including Source Code, as set forth in Schedule A. Vendor shall provide all such Deliverables in both hard copy and electronic format (acceptable to the Department) and as otherwise required and noted herein or in the applicable Statement of Work.

4.4 Performance Standards. The parties agree that the performance standards and related payment, monitoring and review provisions set forth in Schedule C are incorporated herein by this reference as if fully set forth in this Agreement.

4.5 Department Not Required to Accept or Install Enhancements. Vendor shall not condition any of the Department's rights or Vendor's obligations under this Agreement, or any other contract related to the ESB or the Software, on the Department accepting or installing any Enhancements or additional functionality provided by Vendor.

4.6 Hardware. Vendor shall recommend to the Department all Third Party hardware necessary or desirable to be acquired to complete work and provide the Deliverables under this Agreement. At the Department's sole discretion, the Department will procure such Third Party hardware directly or require Vendor to procure or make available the Third Party hardware for the Department upon such terms and conditions as are acceptable to the Department. Vendor represents and warrants with respect to all Third Party hardware procured or made available by or through the Vendor that, upon delivery to the Department: such hardware will be new and unused; title to the hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; the Department's use and possession of the hardware will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Vendor; and the hardware will be free of any rightful claim of any Third Person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

4.7 Third Party Software. Vendor shall recommend to the Department all Third Party Software necessary or desirable to be acquired to complete work and provide all Deliverables under this Agreement. At the Department's sole discretion, the Department will license such Third Party Software directly or require Vendor to license or sublicense the Third Party Software to or on behalf of the Department at the Department's expense. In the latter case, Vendor shall ensure that all Third Party Software or other materials provided pursuant to this Agreement shall be licensed to the Department pursuant to a license agreement, the terms and conditions of which must be acceptable to the Department.

4.8 Manufacturers' Warranties. Vendor shall take all action necessary to ensure that the State and the Department shall be entitled to receive and enjoy all warranties, indemnities and other benefits associated with Third Party Software and Third Party hardware. At the Department's request, Vendor shall assign to the State and the Department all of the licensor's and manufacturer's warranties and indemnities pertaining to Third Party Software and Third Party hardware under any license or other agreement between Vendor and any Third Parties relating to Third Party Software and Third Party hardware.

Section 5. Compensation and Additional Rights and Remedies.

5.1 Compensation. In consideration of Vendor providing the Department with the Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in Schedule A, subject to all terms and conditions of this Agreement, including, without limitation Section 5.2 (Invoices) and Section 5.3 (Retention). The Department shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement. All fees and compensation payable hereunder to Vendor are fixed, not-to-exceed amounts, and Vendor shall not be compensated on a time and materials basis. It is expressly understood and agreed that in no event will the total fees or compensation to be paid hereunder exceed the sum of \$_____. Vendor is not entitled to payment for any Deliverable provided under this Agreement if the Department reasonably determines that such Deliverable has not been satisfactorily or completely delivered or performed, or that such Deliverable fails to meet or conform to any applicable Specifications or that there is a material Deficiency with respect to such Deliverable. In no event shall the Department be obligated to pay Vendor any fees, costs, compensation or other amounts in excess of the amount specified in a Statement of Work for any one or more Deliverables, unless the Department otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written Change Order or an amendment to this Agreement executed by the Department. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Department shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Department or the State. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

5.2 Invoices. Upon receipt of written notice of Acceptance from the Department with respect to one or more Deliverables, Vendor shall submit an invoice to the Department requesting payment of the fees or other compensation specified in Schedule A associated with such Deliverable(s), less the Retained Amount(s) to be withheld in accordance with Section 5.3. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Department. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Department may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Department shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Department believes the invoice is inaccurate or incorrect in any way.

5.3 Retention. To secure Vendor's performance under this Agreement, the Department shall retain 15% of the fees or other compensation associated with each Deliverable and payable hereunder (the "Retained Amounts"). The Retained Amounts shall be payable upon the Department's delivery of written notice of Final Acceptance to Vendor, subject to the terms and conditions hereof.

5.4 Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Department the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Department of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Department under this section 5.4, the Department will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Department may, in its sole discretion, elect to have Vendor apply any amounts due to the Department under this Section 5.4 against any amounts payable by the Department under this Agreement or the Software License Agreement.

5.5 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.

5.6 Set-off Against Sums Owed by Vendor. In the event that Vendor owes the Department or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Department may set off such sum against any sum invoiced to the Department by Vendor in the Department's sole discretion unless otherwise required by law. Any amounts due to the Department as damages may be deducted by the Department from any money or sum payable by the Department to Vendor pursuant to this Agreement or any other agreement between Vendor and the Department.

5.7 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Vendor, in whole or in part, without penalty to the Department or work stoppage by Vendor, in the event the Department determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement and/or the Software License Agreement; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Department under this Agreement.

5.8 Correction/Cure. The Department may correct any Deficiencies with respect to any Deliverable or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the Department. The Department may provide or procure the services reasonably necessary to correct any Deficiencies or cure any Vendor default, in which event Vendor shall reimburse the Department for the actual costs incurred by the Department for such services (or for the reasonable value of the time expended by any Department or State employees who provide such services). In addition, Vendor shall cooperate with the Department or any Third Parties retained by the Department who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.

5.9 Error Correction. With respect to each notice from the Department to Vendor during the term of this Agreement that notifies Vendor that the ESB or any Deliverable delivered by Vendor (and previously accepted by the Department) contains or experiences a Deficiency, Vendor shall, at no cost to the Department, promptly (a) correct the Deficiency and repair the affected Deliverable, and (b) provide the Department with all necessary materials with respect to such repaired or corrected Deliverable, including without limitation the provision of new Source Code, master program disks or other media acceptable to the Department and related Documentation.

5.10 Monitoring and Review. The Department shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Department's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

Section 6. Acceptance Tests, Project Management, Key Personnel and Liquidated Damages.

6.1. Vendor shall commence and complete all work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, including those which may be specified in the Statement of Work and the Project Plan. Vendor shall deliver, install and complete all services and provide all Deliverables no later than the Project Completion Date.

6.2 All Deliverables shall be subject to the Department's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to the Department certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Department to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Department. At the Department's request, Vendor shall assist the Department in performing Acceptance Tests at no additional cost to the Department. Within a reasonable period of time after the Department has completed its Acceptance Testing, the Department shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Department determines that a Deliverable satisfies its Acceptance Tests, the Department shall provide Vendor with notice of Acceptance with respect to such Deliverable. If the Department determines that a Deliverable fails to satisfy its Acceptance Tests, the Department shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event the Department provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to the Department within ten (10) days of Vendor's receipt of notice of Non-acceptance so that the Department may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Department determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy its Acceptance Tests, then the Department shall have the continuing right, at its sole option, to: (i) require Vendor to correct and repair such Deliverable within such period of time as the Department may specify in a written notice to Vendor; (ii) refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Department's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Department to correct such Deficiencies; or (iv) terminate this Agreement and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, the Department may terminate this Agreement pursuant to this Section 6.2 without providing Vendor with any notice or opportunity to cure provided for in Section 10. The Department's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to the Department's satisfaction and the Department has provided Vendor with written notice of Final Acceptance. If the Department determines that all Deliverables satisfy its Acceptance Tests, the Department shall provide Vendor with notice of Final Acceptance with respect to such Deliverables. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the

Department's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency is later discovered with respect to such Deliverable(s).

6.3 Project Management and Reporting.

6.3.1 Project Manager. At the time of execution of this Agreement, Vendor shall designate, in writing, a Project Manager acceptable to the Department to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Department prior to her or his appointment as Vendor's Project Manager. Vendor represents that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Department's site as needed during the course of work under this Agreement and will be available either in person, by telephone or E-mail to respond promptly (in no event more than [2] hours after receipt of a request or inquiry from the Department) during the business day to inquiries from the Department.

6.3.2 Review Meetings. Commencing with performance of this Agreement, Vendor's Project Manager shall meet weekly with the Department's project manager and representatives, unless otherwise mutually agreed, to discuss progress made by the Vendor in the performance of this Agreement. At each review meeting, Vendor's Project Manager shall provide a status report, which includes, at minimum, the information described in Section 6.3.3 and describes any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any party has identified in writing a problem, the Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement.

6.3.3 Reports. Vendor shall provide the Department with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Project Plan, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Department may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Department's approval.

6.3.4 Problem Reporting Omissions. The Department's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement.

6.3.5 Change Order Procedure. The Department may at any time request a modification to the scope of the Statement of Work using a change order. The following procedures for a change order shall be followed:

6.3.5.1 Written Request. The Department shall specify in writing the desired modifications to the Statement of Work with the same degree of specificity as in the original Statement of Work.

6.3.5.2 Vendor's Response. Vendor shall submit to the Department any proposed modifications to the Project Plan and a firm cost proposal, if applicable, for the requested change order within five (5) business days of receiving the Department's change order request. Vendor agrees that there shall be no additional cost or Vendor compensation for or with respect to any change order requests for modifications, Deliverables, modules or functionality that are envisioned in, conceptually similar in nature to, or consistent with, the RFP or the Proposal. Modifications to the Statement of Work that incorporate additional detail with respect to any Deliverable will not have the effect of increasing the not-to-exceed cost of that Deliverable, unless Vendor can show by clear and convincing evidence to the Department that the process of gathering detailed requirements for the ESB revealed information previously unknown to the Vendor, that such new information will cause the estimated time, and therefore cost, necessary to complete a particular Deliverable to increase, and that the incorporation of that information alone into the ESB requirements is the sole cause of the additional time and cost.

6.3.5.3 Effect of Change Order. Both parties must sign and date the change order to authorize the change in Deliverables described therein and incorporated the changes into the Statement of Work and this Agreement. No services shall be performed pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both parties. Upon such execution, a change order shall alter only that portion of a Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement.

6.4 Key Personnel. The Department considers [name project manager, developers and any other key personnel of Vendor, *or* specify on a separate schedule] from Vendor to be essential to a successful project. Vendor acknowledges that a significant reason the Department has entered into this Agreement is because of the special qualifications of such Key Personnel. Vendor shall not remove, reassign, transfer, or replace the individual(s) identified in this section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of the Department's written consent. In the event Vendor requests the Department to consent to a removal, reassignment, transfer or other replacement of any Key Personnel, the Department may review the qualifications of the proposed substitute personnel before providing its written consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better ability, experience and qualifications than the Key Personnel being replaced. Vendor shall not charge the Department, and the Department shall not pay for any proposed replacement personnel while such replacement becomes acclimated to the Project and acquires the necessary skills and project knowledge to proceed with the work under this Agreement. In no event shall this time period exceed twenty (20) business days. Any replacement personnel approved by the Department shall thereafter be deemed Key Personnel for purposes of this Agreement. If at any time during the term of this Agreement, the Department becomes dissatisfied with the performance of any individual who is part of Vendor's personnel, the Department shall notify Vendor of the reasons for such dissatisfaction and may request replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to the Department on the corrective action

Vendor believes is appropriate to address the Department's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced, the replacement shall be effected promptly with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

Vendor acknowledges and agrees that any breach by Vendor of this Section 6.4 will delay and disrupt the Project and the Department's operations and will result in significant loss, expense and damages to the Department and the State. Furthermore, Vendor acknowledges and agrees that it may be extremely impractical and difficult to determine actual damages that the Department or the State may sustain as a result thereof. Accordingly, Vendor agrees to pay as liquidated damages \$____ a day for each and every day or portion thereof that Vendor removes, reassigns or substitutes a person identified in Section 6.4 in violation of that section.

The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the Department may have for Vendor's breach of this Agreement, including the Department's right to terminate this Agreement. The assessment of liquidated damages shall be in addition to and not in lieu of such other remedies as may be available to the Department. It is expressly agreed that the waiver of any liquidated damages due the Department shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Any failure by the Department to demand liquidated damages within any period of time shall not constitute a waiver of such claim by the Department.

Amounts due the Department as liquidated damages may be deducted by the Department from any fees or other compensation payable to Vendor under this Agreement, or the Department may bill Vendor as a separate item therefor or otherwise request in writing Vendor's payment of liquidated damages assessed by the Department. Vendor shall promptly pay the Department any assessed liquidated damages, but in no event later than fifteen (15) days after the date of the Department's assessment or other written request for liquidated damages. At the Department's option, the Department may obtain payment of assessed liquidated damages through one (1) or more claims upon any performance bond furnished by Vendor.

6.5 Security Regulation; Cooperation. Vendor and Vendor's personnel shall comply with the Department's and the State's security regulations including any procedure which the Department's personnel, contractors and consultants are normally asked to follow. Vendor agrees to cooperate fully and to provide any assistance necessary to the Department in the investigation of any security breaches that may involve Vendor or Vendor's personnel.

Section 7. Ownership and Intellectual Property.

7.1 Ownership of [] or [Vendor-Owned Deliverables]. Vendor shall retain all right, title, and interest in and to [describe any specific Deliverables that Vendor shall retain ownership of, such as COTS that will be subject to the Software License Agreement] that was/were independently developed by Vendor prior to the Effective Date of this Agreement ("Vendor-Owned Deliverables").

[7.2 License to the [Vendor-Owned Deliverables/Software]. Upon [the Department providing Vendor with written notice of Acceptance of the Software/Vendor-Owned Deliverables], Vendor shall grant to the Department and the State [and to Authorized Users, as defined in the Software License Agreement], a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to use, reproduce and modify the [Software/Vendor-Owned Deliverables] and such other rights, licenses and privileges as are more fully described in the [Software License Agreement.]

7.3 Ownership and Assignment of Other Deliverables. Vendor agrees that the State and the Department shall become the sole and exclusive owners of all Deliverables, excluding Vendor-Owned

Deliverables. Vendor hereby irrevocably assigns, transfers and conveys to the State and the Department all right, title and interest in and to all Deliverables, excluding Vendor-Owned Deliverables, and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto (“State-Owned Deliverables”). Vendor represents and warrants that the State and the Department shall acquire good and clear title to all State-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Vendor. The Vendor (and Vendor’s employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the State-Owned Deliverables and shall not use any State-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Department and the payment of such royalties or other compensation as the Department deems appropriate. Immediately upon the request of the Department, Vendor will deliver to the Department or destroy, or both, at the Department’s option, all copies of any State-Owned Deliverables in the possession of Vendor.

7.4 Waiver. To the extent any of Vendor’s rights in any State-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State’s and the Department’s rights in and to the State-Owned Deliverables.

7.5 Acknowledgement. Vendor acknowledges and agrees that the State and the Department, as owners and assignees of the State-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation: (i) obtain, secure, file and apply for any legal protection necessary to secure or protect any rights in and to the State-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto; (ii) adapt, change, modify, edit or use the State-Owned Deliverables as the Department or the State sees fit, including in combination with the works of others, prepare derivative works based on the State-Owned Deliverables, and publish, display, perform and distribute throughout the world any State-Owned Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium; and (iii) make, use, sell, license, sublicense, lease, or distribute the State-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party.

7.6 Further Assurances. At the Department’s request, Vendor will (both during and after the termination or expiration of this Agreement) execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by the Department to: (i) establish, perfect or protect the State’s and the Department’s rights in and to the State-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 7.1, and (ii) obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. In the event the Department is unable, after reasonable effort, to secure Vendor’s signature on any letters patent, copyright, or other analogous protection relating to the State-Owned Deliverables, for any reason whatsoever, Vendor hereby irrevocably designates and appoints the Department, and its duly authorized officers, employees and agents, as Vendor’s agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Vendor.

7.7 Disputes. In any dispute over ownership or licensing rights, Vendor shall have the burden of proving prior or independently developed rights by clear and convincing proof.

Section 8. Representations, Warranties and Covenants

8.1 Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement for one year following the date on which the Department provides Vendor with written notice of Final Acceptance (the “Warranty Period”). During the Warranty Period, Vendor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within ten (10) days of receiving notice of such Deficiencies or failures from the Department. In the event Vendor is unable to repair, correct or replace such Deliverable to the Department’s satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Agreement, and the Department shall be entitled to pursue any other available contractual, legal or equitable remedies. Vendor shall be available at all reasonable times to assist the Department with questions, problems and concerns about the Deliverables, to inform the Department promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable may have been accepted by the Department, and provide the Department with all necessary materials with respect to such repaired or corrected Deliverable.

8.2 Vendor represents and warrants that it is fully aware of the Department’s business requirements and intended purposes and uses for the Deliverables as set forth herein and in the RFP, and the Deliverables shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.

8.3 Vendor represents and warrants that: (i) all Deliverables, excluding Third-Party Software, shall be wholly original with and prepared solely by Vendor; (ii) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the services and Deliverables to the Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder and under the Software License Agreement without violating any rights of any Third Party; (iii) Vendor has not previously and will not grant any rights in any Deliverables to any Third Party that are inconsistent with the rights granted to the Department herein and in the Software License Agreement; and (iv) the Department shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

8.4 Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) the Department’s use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform the Department in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Vendor shall, at the Department’s request and at the Vendor’s sole expense: (i) procure for the Department the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or

misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to the Department all fees, charges and any other amounts paid by the Department under this Agreement and the Software License Agreement with respect to such Deliverable. In addition, Vendor agrees to indemnify, defend, protect and hold harmless the Department and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section 8.4. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Department and shall survive termination of this Agreement.

8.5 All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

8.6 Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Department notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to the Department, such that the services are rendered in the above-specified manner, or if the Vendor is unable to perform the services as warranted, Vendor shall reimburse the Department any fees or compensation paid to Vendor for the unsatisfactory services.

8.7 Vendor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement.

8.8 Vendor represents, warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

8.9 Vendor represents and warrants that the Deliverables will comply with any applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

8.10 Vendor covenants that it will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Vendor will take all precautions necessary to prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information.

8.11 Vendor is not in arrears with respect to the payment of any monies due and owing the State or any department, agency or other Governmental Entity thereof, including but not limited to the payment of

taxes and employee benefits, and it will not become so during the Term of this Agreement, or any extensions thereof.

8.12 Vendor represents, warrants and covenants that for the duration of the Agreement and the Warranty Period, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains and will enable the Department to use, modify and maintain such Deliverable(s) and the ESB fully and completely.

8.13 Vendor's warranties provided in this Section 8 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Department.

Section 9. Indemnification.

9.1 Vendor and its successors and permitted assigns shall defend, protect, indemnify and hold harmless the Department, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:

9.1.1 Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading; or

9.1.2 Any act or omissions of Vendor, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors; or

9.1.3 Vendor's performance or attempted performance of this Agreement; or

9.1.4 Failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, federal and international laws, rules, ordinances and regulations; or

9.1.5 Any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State; or

9.1.6 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party.

9.2 Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Department or any other Indemnitee.

9.3 The Department will reasonably cooperate with Vendor to facilitate the defense of any action defended by Vendor. The Department reserves the right to participate in the defense of any such action.

9.4 Vendor shall be liable for any personal injury or damage to property caused by the fault or negligence of Vendor, its officers, directors, employees, agents and approved contractors or subcontractors.

Section 10. Default and Termination.

10.1 Termination for Cause by the Department. The Department may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in the Department's notice of breach or any subsequent notice or correspondence delivered by the Department to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for liquidated damages. In addition, the Department may terminate this Agreement effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

10.1.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, the Software License Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;

10.1.2 Vendor or any of Vendor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

10.1.3 Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;

10.1.4 Vendor terminates or suspends its business;

10.1.5 Vendor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;

10.1.6 Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

10.1.7 The Department determines or believes the Vendor has engaged in conduct that has or may expose the Department or the State to material liability;

10.1.8 Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret; or

10.1.9 Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

10.1.9.1 Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

10.1.9.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

10.1.9.3 Making an assignment for the benefit of creditors;

10.1.9.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement [or the Software License Agreement]; or

10.1.9.5 Taking any action to authorize any of the foregoing.

The Department's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Department, and the Department shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

10.2 Termination for Convenience. Following thirty (30) days written notice, the Department may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor. Termination for convenience can be for any reason or no reason at all.

10.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

10.3.1 The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or

10.3.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or

10.3.3 If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

10.3.4 If the Department's duties, programs or responsibilities are modified or materially altered; or

10.3.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Department's ability to fulfill any of its obligations under this Agreement or the operation of the ESB.

The Department shall provide Vendor with written notice of termination pursuant to this section.

10.4 Limitation of the State's Payment Obligations. In the event of termination of this Agreement for any reason by either party (except for termination by the Department pursuant to Section 10.1), the Department shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the Department up to and including the date of termination of this Agreement and for which the Department is obligated to pay pursuant to this Agreement; provided however, that in the event the Department terminates this Agreement pursuant to Section 10.3, the Department's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper

proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the Department in accordance with the terms of this Agreement. The Department shall not be liable, under any circumstances, for any of the following:

10.4.1 The payment of unemployment compensation to Vendor's employees;

10.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

10.4.3 Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Software License Agreement;

10.4.4 Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement or the Software License Agreement;

10.4.5 Any taxes Vendor may owe in connection with the performance of this Agreement or the Software License Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

10.5 Vendor's Termination Duties. Upon receipt of notice of termination and upon request of the Department, Vendor shall:

10.5.1 Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Department may require.

10.5.2 Immediately cease using and return to the Department any property (including, without limitation, Department Property) or materials, whether tangible or intangible, provided by the Department to Vendor.

10.5.3 Cooperate in good faith with the Department and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

10.5.4 Immediately return to the Department any payments made by the Department for services or Deliverables that were not rendered or provided by Vendor.

10.5.5 Immediately deliver to the Department any and all Deliverables (including State-Owned Deliverables, Source Code, object code, Software, and Documentation) for which the Department has made payment (in whole or in part) that is in the possession of under the control of the Vendor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

10.6 Termination for Cause by Vendor. Vendor may only terminate this Agreement upon written notice of the breach by the Department of any material term, condition or provision of this Agreement, if such breach is not cured within sixty (60) days of the Department's receipt of Vendor's written notice of breach.

Section 11. Insurance.

Insurance Policies. Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa and acceptable to the Department, insurance covering its work of the type and in amounts required by this Agreement. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance

of this Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Agreement shall: (i) be subject to the approval of the Department; (ii) remain in full force and effect for the entire term of this Agreement; and (iii) not be canceled, reduced or changed without the Department's prior written consent. The State of Iowa and the Iowa Department of Human Rights shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa and the Iowa Department of Human Rights are named as additional insured, and that the coverage afforded to the State of Iowa and the Iowa Department of Human Rights under this policy shall be primary insurance. If the State of Iowa or the Iowa Department of Human Rights have other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance."

Unless otherwise requested by the Department, Vendor shall cause to be issued insurance policies with the coverages set forth below:

<i>Type of Insurance</i>	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$5 million \$1 million \$1 million \$1 million
Excess Liability, umbrella form	Each Occurrence Aggregate	\$1 million \$2 million
Errors and Omissions Insurance	Each Occurrence	\$2 million
Property Damage	Each Occurrence Aggregate	\$1 million \$2 million
Workers Compensation and Employer Liability	As Required by Iowa law	

11.2 Claims Provision. All insurance policies required by this Agreement must provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

11.3 Certificates of Coverage. At the time of execution of this Agreement, Vendor shall deliver to the Department certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to this Agreement, certifying that the State of Iowa and the Iowa Department of Human Rights are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Department. All certificates of insurance shall be subject to approval by the Department. The Vendor shall simultaneously with the delivery of the certificates deliver to the Department one duplicate original of each insurance policy.

11.4 Liability of Vendor. Acceptance of the insurance certificates by the Department shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State or the Department for

any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of this Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 11 of this Agreement.

11.5 Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Department or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Department.

11.6 Filing of Claims. In the event either the Department or the State suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the Department's request, immediately file a proper claim under such policy. Vendor will provide the Department with proof of filing of any such claim and keep the Department fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Department and the State. Vendor shall pay to the Department and the State any insurance proceeds or payments in receives in connection with any such claim immediately upon Vendor's receipt of such proceeds or payments.

11.7 Proceeds. In the event the Department or the State suffers a loss that may be covered under any of the insurance policies required under this Section 11, neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Department and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the Department and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

Section 12. Contract Administration.

12.1 Independent Contractor. Vendor is an independent contractor performing services for the Department. Vendor shall not hold itself out as an employee or agent of the Department. The Department shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of the Department or the State for any purpose, including for federal or State tax purposes. The Department shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

12.2 Compliance with the Law and Regulations.

12.2.1 Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Department of Management to comply

with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

12.2.2 Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

12.2.3 The Department may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

12.3 Confidentiality. Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by the Department or the State ("Department Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Department Property shall at all times remain the property of the Department and/or the State. Vendor shall preserve the confidentiality of Department Property disclosed or furnished by the Department to Vendor and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all Department Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors may be required by the Department to execute confidentiality or non-disclosure agreements to obtain access to certain Department Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Department Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the Department to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Vendor agrees to return any and all Department Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of the Department. In the event that Vendor receives a request for access to any Department Property, Vendor shall immediately communicate such request to the Department for consideration and handling.

Vendor shall indemnify the Department, the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Department may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor acknowledges that the disclosure of any Confidential Information of the Department or the State will immediately give rise to continuing irreparable injury to the Department and others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Department, the Department will be entitled to injunctive relief. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

12.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

12.5 Third Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, the State and Governmental Entities may rely on or derive any rights pursuant to or

under this Agreement. This Agreement is intended to benefit only the Department, the State, Governmental Entities and the Vendor.

12.6 Choice of Law and Forum.

12.6.1 This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof.

12.6.2 Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise.

12.6.3 This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Department or the State, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise.

12.6.4 Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints [name] at [address] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Department. Nothing in this provision will alter the right of the Department to serve process in any other manner permitted by law.

12.6.5 This Section 12.6 shall survive termination of this Agreement.

12.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Department may assign this Agreement to any State agency or unit of State government that succeeds the Department's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Department to which the Deliverables relate. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Department with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Department.

12.8 Use of Subcontractors/Third Parties. None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of the Department. The Department's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Department, whether financial or otherwise. Any subcontract to which the Department has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Department may deem necessary. Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify, defend and hold harmless the Department and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. If Vendor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the Deliverables provided under this Agreement, the Department may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in the manner authorized in this paragraph shall not relieve Vendor or its surety from obligation with respect to any unpaid claims. All subcontracts shall contain provisions for the Department access to the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

12.9 Integration. This Agreement and the Software License Agreement represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement or the Software License Agreement. The Department shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, or "sneakwrap" agreement (or any other similar agreement) that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Department on the basis of draftsmanship or preparation thereof.

12.10 Obligation Beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 5.1 - 5.4, 5.6 - 5.9, 7.1-7.7, 8.1 - 8.13, 9.1 - 9.4, 10.4 - 10.6, 11.1-11.6, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.16, 12.18, 12.19, 12.24, 12.25, 12.28, 12.30, 12.32, 12.33, and 12.37 - 12.39 shall survive termination of this Agreement and/or termination of Support.

12.11 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Department and Vendor for the goods, services and other Deliverables provided in connection with this Agreement, except for the Software License Agreement.

12.12 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any

subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.13 Notices.

12.13.1 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Department:

If to Vendor:

12.13.2 Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

12.13.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.14 Cumulative Rights. The various rights, powers, options, elections and remedies of the Department and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the Department and the State by law, and shall in no way affect or impair the right of the Department or the State to pursue any other contractual, equitable or legal remedy to which the Department and the State may be entitled. The election by the Department or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.15 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.16 Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel providing services to the Department are responsive to the Department's requirements and requests in all respects.

12.17 Authorization. Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

12.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

12.19 Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

12.20 Headings or Captions and Terms. The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

12.21 Multiple Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

12.22 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

12.23 Additional Provisions. The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.24 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

12.25 Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

12.26 Force Majeure.

12.26.1 Neither Vendor nor the Department shall be liable to the other for any delay or failure of performance of this Agreement, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure" and not as a result of the fault or negligence of a party.

12.26.2 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other similar catastrophic events which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of Vendor or any parent, subsidiary, affiliated or associated company of Vendor or claims or court orders that restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

12.26.3 If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the Department.

12.27 Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

12.28 Right of Inspection. Vendor shall allow the Department, or anyone designated by the Department, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

12.29 Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Department and the State are exempt from the payment of State sales and other taxes.

12.30 Title to Property. Title to all property (including Department Property) furnished by the Department and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Department and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Department upon the earliest of completion, termination, or cancellation of this Agreement or at the Department's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by

Vendor, for which Vendor has been reimbursed or paid by the Department under this Agreement, shall pass to and vest in the Department and/or State, except as otherwise provided in this Agreement.

12.31 Exclusivity. This Agreement is not exclusive. During the term of this Agreement, the Department may obtain similar services from other service providers.

12.32 Award of Related Agreements. the Department may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Department or the State in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Department will abide by this provision.

12.33 Sovereign Immunity. The Department and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

12.34 Disclaimer. All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Department at the time the above-cited documents were prepared. The Department does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

12.35. Procurement by other Governmental Entities. Vendor acknowledges and agrees that other State agencies, departments, boards, commissions, establishments, units and other governmental entities (as defined in Iowa Code Section 8A.101) may procure services and Deliverables from Vendor under this Agreement.

12.36. Assignment of Third Party Warranties. Vendor hereby assigns and shall assign to the Department any and all existing and future warranties, indemnities and other benefits obtained or available from the licensor of any Third Party software or the manufacturer of any equipment or replacement parts provided or otherwise furnished in connection with this Agreement.

12.37. Attorney's Fees and Expenses. In the event Vendor defaults in any obligations under this Agreement, Vendor shall pay to the Department all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the Department) incurred by the Department in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.38 Contract Compliance Audit. Vendor agrees that the Department or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of this Agreement to determine whether or not the Vendor is complying with the terms of this Agreement, criteria established for access to Department Property, State and federal laws regarding Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the Department or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.39 Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property

and Department Property furnished by the Department for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Department request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Department. In addition, at the Department's request, Vendor will reimburse the Department for any loss or damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the Department and the State. Vendor shall obtain the prior advance written approval from the Department prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks or intellectual property rights of the Department or the State.

12.40 Notification of Events. Vendor shall notify the Department in writing if any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

12.40.1 Vendor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or

12.40.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

12.40.3 Making an assignment for the benefit of creditors; or

12.40.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or

12.40.5 An order is entered approving an involuntary petition to reorganize the business of Vendor for all or part of its property; or

12.40.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Vendor is issued by any court or administrative agency against all or any material portion of Vendor's property; or

12.40.7 Taking any action to authorize any of the foregoing.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

[Department]

[Vendor]

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

ATTACHMENT 6 – SAMPLE SOFTWARE LICENSING AGREEMENT**Software License Agreement**

This Software License Agreement (the “Agreement”) is effective as of _____, 2006 (“Effective Date”), and is made by and between _____, a [corporation] organized under the laws of _____, (“Licensor”) and the State of Iowa (“State”), acting by and through the Iowa Department of Human Rights (“Department”) (the State and the Department shall be referred to individually and collectively as “Licensee”).

SECTION 1. DEFINITIONS

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

“Authorized Contractors” mean independent contractors, consultants or other Third Parties who are retained or hired by Licensee or a Governmental Entity to maintain, modify, support or enhance the Software or to otherwise assist Licensee or Governmental Entities with their use of the Software consistent with the rights granted herein.

“Confidential Information” means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “disclosing party”) to the other party (a “receiving party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party; (ii) was known to the receiving party prior to the disclosure of the information by the disclosing party; (iii) was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the receiving party in violation of this Agreement or in breach of any other agreement with the disclosing party; (v) is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the receiving party with the written consent of the disclosing party.

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to the Software, including, without limitation, any failure of the Software to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Software.

“Documentation” means any and all technical information, commentary, explanations, design and system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Software, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Enhancements” means all updates, upgrades, patches, additions, modifications or other enhancements to the Software provided or made by Licensor or any Third Party, any new releases of Software, and all changes to the Documentation and Source Code as a result of such Enhancements.

“Governmental Entity” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4) (2005), or any successor provision to that section. The term Governmental Entity shall also include agencies, independent agencies, departments, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, offices of elective constitutional or statutory officers, and other units or entities of government.

“Public Code” means one or more of the following: (1) any software that contains or is derived in any manner (in whole or in part) from open source software or software subject to similar licensing or distribution requirements; and (2) any software that requires as a condition of its use, modification or distribution that such software (or other software incorporated into, derived from or distributed with such software) be either (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

“Services Contract” means the Services Agreement by and between the Department and Licensor dated _____.

“Software” means the _____ and all other software, programs, applications, modules and components listed in Schedule A, in all forms, including Source Code and object code, all related Documentation and Enhancements, and all copies of the foregoing.

“Source Code” means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Software stated or expressed in this Agreement, the Services Contract, Documentation, the Licensee’s Request for Proposal No. _____ for [use title of RFP] (“RFP”), and the Licensor’s proposal dated _____, in response to the RFP (“Proposal”). Specifications shall include the Acceptance Criteria and any

specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

“Statement of Work” shall have the meaning ascribed to it in the Services Contract.

“Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

“Toolsets” means the business process modeling tool and any other programming, IDE, or business analysis tool or set of tools used by the Contractor for development or implementation of the requirements of RFP No. 05103106.

“User” means any Third Party that is authorized or permitted by the Licensee or a Governmental Entity to access or use the Software and its functions.

“Warranty Period” shall have the meaning ascribed to it in the Services Contract.

All other capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Services Contract.

SECTION 2. SOFTWARE LICENSE

2.1 License. Licensors hereby grants to Licensee and to Governmental Entities a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to:

2.1.1 Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Software, and prepare derivative works based on the Software, in all media now known or hereafter created;

2.1.2 Combine and use the Software with other software, firmware, Public Code and hardware;

2.1.3 Grant any or all of the rights set forth/granted in Subsections 2.1.1 and 2.1.2 above to Authorized Contractors;

2.1.4 [Grant rights to access and use the Software and its functions to Users; and]

2.1.5 [Sell, lease, license, sublicense or otherwise distribute or make available the Software, and all derivatives thereof and modifications thereto, to Third Parties.]

All Software subject to this Agreement may be used on any one or more of the Licensee’s or any Governmental Entity’s computers, data center locations, networks, Internet or intranet sites, servers or other systems (“Licensee Systems”). For purposes of this Agreement, the parties agree that if the Licensee or any Governmental Entity User makes any modifications or enhancements to the Software, the Licensee or Governmental Entity who makes such modification or enhancement owns such modifications or enhancements.

The foregoing license grants and rights include a license under any current or future patents owned or licensable by Licensor to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Software or any other Deliverables provided under the Services Contract, including without limitation the [name System or specific software/modules, etc.], with any hardware and software.

2.2 Delivery of Source Code. Licensor shall furnish and deliver to Licensee a complete copy of all Source Code (on a media and in an electronic format acceptable to Licensee) and updated Documentation (including any written information necessary or desirable for the maintenance, modification, compilation, and/or enhancement of the Software) for the most current version of all Software provided to Licensee hereunder: (i) upon Licensee's Acceptance of the Software, (ii) when Licensor delivers or furnishes any Enhancement to Licensee under this Agreement or any maintenance or support agreement related to the Software, and (iii) upon Licensee's written request. All of the rights and privileges granted under this Agreement with respect to the Software shall apply to the Source Code, and Licensee and Authorized Users shall be entitled to exercise all of such rights and privileges with respect to the Source Code. In addition, Licensee and Authorized Users shall have a nonexclusive, irrevocable and perpetual license to maintain, modify, enhance, and prepare derivative works based upon, the Software and/or the Source Code.

2.3 Licensee Not Required to Accept or Install Enhancements. Licensor shall not condition any of the Licensee's rights and remedies, or the Licensor's obligations, under this Agreement or any other agreement related to the Software, on the Licensee accepting or installing any Enhancements or additional functionality provided by Licensor.

SECTION 3. TERM

The term of this Agreement and the license granted hereunder shall be perpetual unless terminated by either party only in accordance with the express terms of this Agreement.

SECTION 4. DELIVERY AND INSTALLATION.

Licensor shall deliver the Software to Licensee and setup and install the Software for use on the Licensee Systems specified by Licensee in accordance with the Services Contract and the Statement of Work. Licensor shall bear all freight, shipping, handling and insurance costs for delivery of the Software and shall bear all risk of loss with respect to the Software, including any losses resulting from any damage to or destruction of the Software, in whole or in part, which may occur prior to Licensee's delivery of written notice of Acceptance to Licensor with respect to the Software.

SECTION 5. COMPENSATION.

5.1 License Fee. In consideration of the grant of the perpetual license and all other rights granted to Licensee and Governmental Entities under this Agreement, Licensor shall be entitled to receive the amount specified in the Statement of Work to license the Software subject to this Agreement, subject to all of the terms and conditions of this Agreement and the Services

Contract. Such amount, when paid, shall be deemed a fully paid-up license fee, and Licensee and Governmental Entities shall not be required to pay any additional license fees, expenses, costs, charges or other amounts in connection with this Agreement and the rights granted hereunder, unless otherwise agreed by Licensee in writing.

5.2 Invoice and Payment. Licensors shall submit to the Department an invoice requesting payment of the fee specified above and supporting documentation in accordance with the terms and conditions of Section 5.2 of the Services Contract. The Department shall pay all approved invoices in accordance with and subject to the terms and conditions of the Services Contract, including Sections 5.1- 5.4, 5.6, 5.7 and 10.4 thereof. Notwithstanding anything herein to the contrary, the Department shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Department believes the invoice is inaccurate or incorrect in any way.

5.3 Set Off. In the event that Licensors owe the Department or the State any sum under the terms of this Agreement, the Services Contract, any other agreement, pursuant to a judgment, or pursuant to any law, the Department may set off such sum against any sum invoiced to the Department in the Department's sole discretion unless otherwise required by law. Amounts due to the Department or State as liquidated damages or any other damages awarded by a court, an administrative law judge, or any other similar entity, may be deducted by the Department from any money or sum payable by the Department to Licensors pursuant to this Agreement or any other agreement between Licensors and the Department or the State.

5.4 Withholding. In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Licensors, in whole or in part, without penalty to Licensee or work stoppage by Licensors, in the event: (i) Licensors fail to provide Software or correct any Deficiencies with respect to any Software to Licensee's satisfaction; (ii) Licensors fail to perform any of its other obligations as set forth in this Agreement and/or the Services Contract; or (iii) the Software or any portion thereof fails to meet or conform to any applicable Specifications. No interest shall accrue or be paid to Licensors on any compensation or other amounts withheld or retained pursuant to the Section 5.4.

SECTION 6. REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Licensors represent and warrant that during the Warranty Period, the Software (in whole and in part) shall: (i) be free from material Deficiencies; (ii) conform to and operate in accordance with all Specifications; and (iii) be compatible with and interoperate fully and correctly with the Licensee Systems specified in Schedule B. Licensors warrant that all media containing or relating to the Software furnished hereunder shall be free from defects in material and workmanship. During the Warranty Period, Licensors shall, at Licensee's request and at Licensors' expense, repair, correct or replace any Software that fails to comply with the warranties and requirements of this Section 6.1 promptly upon receiving notice of such failure from Licensee, but in no event more than 3 days after the date of receipt of such notice. In the event Licensors are unable to repair, correct or replace such Software to Licensee's satisfaction, Vendor shall refund the fees or other amounts paid for such Software within ten (10) business days after Licensee's request for such refund. The foregoing shall not constitute an exclusive

remedy under this Agreement, and Licensee shall be entitled to pursue any other available contractual, legal or equitable remedies.

6.2 Licensors represents and warrants that Licensors is fully aware of Licensee's business requirements and intended uses for the Software as set forth in the RFP, and the Software shall satisfy such requirements in all material respects and is fit for such intended uses.

6.3 Licensors represents and warrants that: (i) it is the owner of the Software, excluding any Third Party Software, and any and all intellectual property rights in and to such Software, including, but not limited to, copyrights, trademarks, trade secrets, trade dress, and/or patent rights; (ii) it owns, possesses, holds, and has received all rights, permits, permissions, licenses and authority necessary to provide all Software to Licensee hereunder and to grant and convey the benefits, licenses and other rights granted or conveyed to Licensee and Governmental Entities hereunder without violating any rights of any Third Party; (iii) the Software, excluding any Third Party Software, shall be wholly original with and prepared solely by Licensors; (iv) Licensors has not previously and will not grant any rights in the Software to any Third Party that are inconsistent with the rights granted herein; and (v) Licensee and Governmental Entities shall peacefully and quietly have, hold, possess, use and enjoy all Software without suit, disruption or interruption.

6.4 Licensors represents and warrants that: (i) the Software (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, the Software); (ii) Licensee's (and any Governmental Entity's) use of the Software in accordance with the terms of this Agreement; and (iii) Licensee's (and any Governmental Entity's) exercise of the rights, licenses and benefits granted or conveyed hereunder, do not and will not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Licensors further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. Licensors shall immediately inform Licensee in writing upon becoming aware of any actual, potential or threatened claim of infringement or violation of any intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. If such a claim arises or is likely to arise, then Licensors shall, at the Licensee's request: (i) procure for the Licensee and Governmental Entities the right or license to continue to use the Software at issue; (ii) replace such Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation; or (iii) modify or replace the affected portion of the Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation. In the event Licensors is unable to fulfill its obligation under (i), (ii) or (iii) above as requested, Licensors shall accept the return of the Software and refund to the Licensee all fees, charges and any other amounts paid by the Licensee with respect to such Software. In addition, Licensors agrees to fully indemnify, defend, protect and hold harmless the Licensee, Governmental Entities and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Licensee and shall survive termination of this Agreement.

6.5 The Licensor represents and warrants that all Software provided under this Agreement which uses date data shall accurately process data, including but not limited to, calculating, comparing and sequencing from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, integral calculations, day-in-year calculations, day-of-week calculations and week-of-year calculations; and not experience abnormal ending and/or produce invalid or incorrect results in the operation of the Software or Licensee's System. If the Software is to perform as a system with other hardware and/or software, then this warranty shall apply to the Software as it processes, transfers, sequences data, or otherwise interacts with other software, hardware, components or other parts of the system, provided that such other software, hardware, components or parts do not fail to meet any applicable requirements of this Section 6.5. The remedies available to the Licensee for breach of this warranty include, but are not limited to, repair or replacement of non-compliant Software. Nothing in this warranty shall be construed to limit any rights or remedies of the Licensee under this Agreement with respect to Deficiencies in the Software other than data processing compliance.

6.6 The Licensor represents and warrants that all Software and Enhancements do not and shall not as delivered or provided by Licensor contain an anti-use device, a disabling device, lockup program, a so-called "time bomb" or "drop dead" device, "back door," instructions, contaminants, viruses, Trojan Horses, worms, cancelbots, or any other mechanism, code or computer programming routine that will disable, damage, impair or impede, lock-up, alter, halt, abnormally end, surreptitiously intercept, expropriate or interfere with the Software, Licensee Systems or any data or information of Licensee. Licensor further represents and warrants that all Software and Enhancements do not contain any other programming or device of any kind that would allow unauthorized access to the Software by Licensor or any other person or any Third Party. Licensor covenants that it will not under any circumstance, including enforcement of a valid contract right, (i) install or trigger a lockup program or disabling device, or (ii) take any step that would in any manner interfere with Licensee's use of the Software or Licensee Systems, or restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this provision, Licensor shall, immediately after receipt of notification of the breach, cure the breach to Licensee's satisfaction, including, without limitation, repairing, at Licensor's expense, any damage done to the Software or Licensee Systems or any other property.

6.7 Licensor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, orders and ordinances in connection with its performance of this Agreement.

6.8 Licensor represents and warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

6.9 Licensor represents and warrants that the Software and the license, use and other rights granted hereunder comply with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, orders and ordinances in effect as of the date of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as

amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

6.10 Licensors has not incorporated and will not incorporate, without the prior written consent of Licensee, any Public Code, in whole or in part, into any part of the Software or any Enhancement, or use Public Code, in whole or in part, in the development of any part of the Software or any Enhancement in a manner that may subject the Software or any Enhancement, in whole or in part, to all or part of the license obligations of any Public Code.

6.11 Licensors represents and warrants that all Documentation will accurately reflect the operation of the Software or other Deliverables to which the Documentation pertains and will enable the Licensee to use, modify and maintain the Software fully and completely.

6.12 Licensors's warranties provided in this Section 6 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Licensee.

SECTION 7. TERMINATION.

7.1 Termination by Licensee for Cause. The Licensee may terminate this Agreement, without penalty, upon written notice for the breach by Licensors of any material term, condition or provision of this Agreement, if such breach is not cured within any time period specified in the notice of breach or any subsequent notice delivered by Licensee to Licensors, assuming cure is feasible. The Licensee's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Licensee.

7.2 Termination by Licensee for Reasons Other Than Cause. Licensee may terminate this Agreement for any of the reasons for which the Department may terminate the Services Contract (including Sections 10.2 and 10.3, but excluding Section 10.1) upon providing any applicable written notice expressly required to be provided pursuant to the Services Contract. For purposes of this Section 7.2, all references in the Services Contract to the terms "State," "Agreement," and "Deliverables" shall be deemed to include and additionally refer to the terms "Licensee," "Agreement," and "Software," respectively, as used herein. Licensee's right to terminate this Agreement for any of the reasons provided herein shall survive termination of the Services Contract.

7.3 Termination by Licensors for Cause. Licensors may only terminate this Agreement and revoke the license and other rights granted under this Agreement if Licensee has breached this Agreement by failing to pay in full the license fee specified in Section 5.1 in accordance with the terms of this Agreement and the Services Contract, or if Licensee commits a material breach of Section 9.2.2 of this Agreement, provided in either event that Licensors first gives Licensee written notice of the alleged breach and a 60-day period in which to cure the breach. Licensors may not terminate this Agreement and revoke the license and other rights granted hereunder if Licensee's failure to pay any portion or all of the license fee or other amounts arises from or

relates to Licensee's withholding or retention of such amounts in accordance with this Agreement or the Services Contract. Upon termination of this Agreement by Licensor in accordance with this Section 7.3, Licensee will return the Software to Licensor or will certify in writing to Licensor that it has destroyed all copies of the Software. Except as expressly provided in this Section 7.3, Licensor shall not be entitled to terminate this Agreement or revoke the license and other rights granted herein.

7.4 Limitation of the Licensee's Payment Obligations. In no event shall Licensee be required to pay any amounts other than those expressly stated in Section 5.1 of this Agreement. The Licensee (and Governmental Entities) shall not be liable, under any circumstances and regardless of termination of this Agreement, for any of the following:

7.4.1 The payment of unemployment compensation to Licensor's employees;

7.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

7.4.3 Any costs incurred by Licensor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Services Contract;

7.4.4 Any damages or other amounts for or relating to the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement, the Services Contract or any agreement with Third Parties;

7.4.5 Any taxes Licensor may owe in connection with the performance of this Agreement or the Services Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

SECTION 8. INDEMNIFICATION.

8.1 Licensor and its successors and permitted assigns shall defend, indemnify and hold the Licensee and Governmental Entities and their employees, officers, directors, agents, and officials (individually and collectively "Indemnitees") harmless from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) related to, resulting from or arising out of this Agreement, including, but not limited to, any claims related to, resulting from, or arising out of:

8.1.1 Any violation or breach of any term or condition of this Agreement by Licensor; or

8.1.2 Any acts or omissions of the Licensor related to the performance of this Agreement, including any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Licensor, its officers, employees, agents, directors, contractors or subcontractors; or

8.1.3 Failure by Licensor or its employees, agents, officers, or directors to comply with any applicable local, state, federal and international laws, rules, ordinances or regulations; or

8.1.4 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any claim that the Software or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party.

8.2 Licensor's duties as set forth in this Section 8 shall survive the termination of this Agreement and shall apply to all acts taken in the performance of this Agreement regardless of the date any potential claim is made or discovered by Licensee or any other Indemnatee.

8.3 Licensee shall reasonably cooperate with Licensor to facilitate the defense of any action defended by Licensor. Licensee reserves the right to participate in the defense of any action or claim for which indemnification is provided hereunder.

SECTION 9. CONTRACT ADMINISTRATION.

9.1 Independent Contractor. The status of the Licensor shall be that of an independent contractor. Licensee shall not provide the Licensor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither the Licensor nor its employees shall be considered employees of the State of Iowa. Neither the Licensor nor its employees are eligible for any State employee benefits, including but not limited to, retirement benefits, insurance coverage or the like. Neither the Licensor nor its employees shall be considered employees of the Licensee or the State of Iowa for federal or state tax purposes. Licensee shall not withhold taxes on behalf of the Licensor (unless required by law). The Licensor shall be responsible for payment of all taxes in connection with any income earned in connection with this Agreement.

9.2 Confidentiality.

9.2.1 Licensor and its employees, agents, contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed (exclusive of Licensor's Software and Documentation), owned or maintained by Licensee ("Licensee Property") to the extent necessary to perform its obligations under this Agreement and the Services Contract. Such Licensee Property shall at all times remain the property of Licensee. Licensor shall preserve the confidentiality of Licensee Property and shall maintain procedures for safeguarding such property. Licensor shall designate one individual who shall remain the responsible authority in charge of all Licensee Property received, collected, accessed, disseminated or otherwise used by Licensor in connection with the performance of this Agreement and the Services Contract. Licensor shall accept responsibility for providing adequate supervision and training to its employees, agents, contractors and subcontractors to ensure compliance with the terms of this Agreement. Licensor and its employees, agents, and contractors or subcontractors may be required by the Licensee to execute confidentiality or non-disclosure agreements to obtain access to certain Licensee Property. Licensor and its employees, agents, contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any

Licensee Property received, collected, maintained, or used in the course of performance of the Agreement or the Services Contract except as permitted by the Licensee to enable Licensors to perform its obligations under this Agreement and the Services Contract and except as authorized by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Licensors agree to return any and all Licensee Property and all copies thereof received, collected, accessed, maintained, created, or used in the course or performance of the Agreement in whatever form it is maintained promptly at the request of Licensee. In the event that Licensors receive a request for access to any Licensee Property, Licensors shall immediately communicate such request to Licensee for consideration and handling. Licensors shall indemnify Licensee in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this Section, the Licensee may terminate this Agreement immediately without notice of default and opportunity to cure. Licensors acknowledge that the disclosure of any Confidential Information of the Licensee will immediately give rise to continuing irreparable injury to the Licensee or others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Licensee, the Licensee will be entitled to injunctive relief. Licensors' obligations and Licensee's remedies under this Section 9.2.1 shall survive termination of this Agreement.

9.2.2 Except as provided or contemplated herein, and subject to applicable federal, state or international laws, rules or regulations (including Iowa Code Chapter 22 and [insert citation for the Department's Fair Info. Practices rules]) the Licensee shall not disclose to Third Parties (excluding Governmental Entities and Authorized Contractors) any information of Licensors that is marked or otherwise clearly identified by Licensors as Confidential Information without the prior written consent of Licensors. Licensors shall limit such identification to information it reasonably believes is entitled to confidential protection pursuant to such applicable laws, rules and regulations. Notwithstanding the foregoing, the Licensee may disclose Licensors' Confidential Information pursuant to: (i) any legal, judicial, or administrative proceedings, subpoena, summons, order, ruling or other legal or administrative processes; and/or (ii) applicable laws, rules, or regulations. In such event, the Licensee shall provide prompt notice to Licensors of the circumstances giving rise to the Licensee's disclosure. Licensors acknowledge that the Licensee is subject to Iowa Code Chapter 22 and other laws, rules and regulations governing public records. If a request is made to view or otherwise access Licensors' Confidential Information pursuant to such laws, rules or regulations, the Licensee will promptly notify Licensors of the request. Subject to the foregoing, the Licensee will use reasonable efforts to protect Licensors' Confidential Information provided such information can reasonably be determined to constitute a confidential record under Iowa Code Section 22.7 or other applicable laws, rules or regulations. In the event the Licensee reasonably determines that such information is not a confidential record, the Licensee may release such information unless Licensors files an action in Polk County District Court to prevent the release of the requested information within ten (10) days of receiving notice from the Licensee.

9.3 Compliance with Laws. Licensors and its employees, agents, officers, directors, contractors and subcontractors shall comply with all applicable federal, state, international and

local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including, without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws and laws relating to the use of targeted small businesses as subcontractors or suppliers. Licensor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Licensor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 Iowa Admin. Code 4. Licensor represents and warrants that it has complied with all federal, state, foreign and local laws, codes, rules, ordinances, orders and regulations applicable to the performance of its obligations under this Agreement.

9.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

9.5 Third-Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Licensee, Governmental Entities and the Licensor.

9.6 Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Licensor hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Licensee, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Licensor irrevocably consents to service of process by certified or registered mail addressed to the Licensor's designated agent. The Licensor appoints [name] at [address] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Licensor's agent for service is unable to act as such or the address of the agent changes, Licensor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Licensee. Nothing in this provision will alter the right of the Licensee to serve process in

any other manner permitted by law. This Section 9.6 shall survive termination of this Agreement.

9.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Licensee may assign this Agreement to any State agency or unit of State government that succeeds the Department's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Department to which the Software relates. For purposes of construing this clause, a transfer of a controlling interest in the Licensor, a merger, sale or consolidation of Licensor, or a sale of substantially all of Licensor's assets shall be considered an assignment. Licensor agrees that it shall provide Licensee with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Licensor and of any proposed merger, sale or consolidation of Licensor. Licensor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Licensor or any affiliate thereof without the prior written consent of Licensee.

9.8 Integration. This Agreement represents the entire agreement between the parties concerning the grant of the perpetual license, distribution rights and other rights granted to Licensee and Governmental Entities under this Agreement, and neither party is relying on any representation that may have been made with respect thereto which is not included in this Agreement. This Agreement shall not supercede the Services Contract. Licensee shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "sneakwrap" agreement, or any other similar agreement that may accompany or relate to the Software. Licensor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Licensee on the basis of draftsmanship or preparation hereof.

9.9 Headings or Captions and Terms. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

9.10 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

9.11 **Obligations Beyond Agreement Term.** This Agreement shall remain in full force and effect perpetually unless terminated pursuant to Section 7 of this Agreement. Licensor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 2.1-2.3, 5.2-5.4, 6-8, 9.4, 9.2, 9.3, 9.5, 9.6, 9.8, 9.11-9.16, 9.18, 9.19, 9.22, 9.24-9.26, 9.29, and 9.33-9.35 shall survive termination of this Agreement.

9.12 **Use of Third Parties.** None of the services to be provided by Licensor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of Licensee. Licensee's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of Licensee, whether financial or otherwise. Any subcontract to which the Licensee has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Licensee may deem necessary. Licensor is solely liable for any and all payments that may be due to the subcontractor pursuant to its subcontract agreement with Licensor. Licensor shall indemnify, defend and hold harmless the Licensee from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor's breach of any subcontract into which it enters, including Licensor's failure to pay any and all amounts due by Licensor to any subcontractor. No subcontract or delegation of work shall relieve or discharge Licensor from any obligation, provision, or liability under this Agreement. Licensor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Licensor, would constitute a breach of this Agreement, shall be deemed a breach by Licensor and have the same legal effect.

9.13 **Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of Licensee and the Licensor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

9.14 **Notices.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to Licensee:

If to Licensor:

Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier. From time to time, either party may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

9.15 Cumulative Rights. The various rights, powers, options, elections and remedies of Licensee provided in this Agreement shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed Licensee by law, and shall in no way affect or impair the right of Licensee to pursue any other contractual, equitable or legal remedy to which Licensee may be entitled. Licensee's election of any one or more remedies shall not constitute a waiver of the right to pursue any other available remedies.

9.16 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

9.17 Authorization. Licensors represents and warrants to Licensee that:

9.17.1 It has the right, power and authority to enter into and perform its obligations under this Agreement.

9.17.2 It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself enforceable in accordance with its terms.

9.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives

9.19 Record Retention And Access. The Licensors shall maintain books, records, and documents which sufficiently and properly document all services and deliverables provided under this Agreement and calculate all charges billed to the Licensee throughout the term of this Agreement for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or completion of any required audit. The Licensors shall permit the Licensee, the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Licensors relating to orders, invoices, or payments or any other documentation or materials pertaining to this Agreement. The Licensors shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of the Licensors' books and records conducted in accordance with this provision. The provisions of this section 9.19 shall be incorporated by Licensors in any permitted subcontract with a value or cost of \$10,000 or more.

9.20 Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

9.21 Additional Provisions. The parties agree that if an Addendum, Schedule, Rider or Exhibit is attached and referred to in this Agreement then the same shall be deemed incorporated herein by reference.

9.22 Further Assurances and Corrective Instruments. Licensor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

9.23 Award of Related Agreements. The Licensee may undertake or award supplemental or successor agreements for work related to this Agreement, the Services Contract or with respect to the Software. Licensor shall cooperate fully with other contractors, consultants and other persons who may be engaged by Licensee in connection with this Agreement, the Services Contract or with respect to any of the Software. Licensor will ensure that its subcontractors, if any, will abide by this provision.

9.24 Sovereign Immunity. The Department and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations, including, without limitation, Iowa Code Chapter 669 and the Constitution of the State of Iowa.

9.25 Care of Property. Licensor shall be responsible for the proper custody and care of any Licensee Property furnished for Licensor's use in connection with the performance of the Agreement, and Licensor will reimburse the Licensee for any loss or damage to such property caused by Licensor, or any person, agent or subcontractor employed or utilized by Licensor, normal wear and tear excepted.

9.26 Licensor shall notify Licensee in writing if any of the following has been engaged in by or occurred with respect to Licensor or any corporation, shareholder or entity having or owning a controlling interest in Licensor:

9.26.1 Licensor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any

bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

9.26.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

9.26.3 Making an assignment for the benefit of creditors; or

9.26.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Licensor's performance of its obligations under this Agreement.

9.26.5 An order is entered approving an involuntary petition to reorganize the business of Licensor for all or part of its property; or

9.26.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Licensor is issued by any court or administrative agency against all or any material portion of Licensor's property; or

9.26.7 Taking any action to authorize any of the foregoing.

9.27 Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

9.28 Taxes. Licensor shall be responsible for paying any taxes incurred by Licensor in the performance of this Agreement. The State and the Department are exempt from the payment of Iowa sales and other taxes.

9.29 Obligations of Joint Entities. If Licensor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

9.30 Attorney's Fees and Expenses. Subject to the other terms and conditions of this Agreement, in the event Licensor defaults in any obligations under this Agreement, Licensor shall pay to Licensee all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of Licensee) incurred by Licensee in enforcing this Agreement or any of its rights and remedies with respect thereto.

9.31 Time is of the Essence. Time is of the essence with respect to Licensor's performance of its obligations under this Agreement. Licensor shall ensure that all personnel providing services to Licensee are responsive to Licensee's requirements and requests in all respects.

SECTION 10. EXECUTION

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

Licensors

By: _____

Date: _____

Title: _____

Licensee

State of Iowa, acting by and through
the _____ Department

By: _____

Date: _____

Title: _____

ATTACHMENT 7 – TECHNICAL PROPOSAL RESPONSE FORM**TECHNICAL PROPOSAL
RESPONSE FORM****STATE OF IOWA
CRIMINAL AND JUVENILE JUSTICE
PLANNING****REQUEST FOR PROPOSAL NO.**

Submitted by:	
Firm Name:	
Address:	
City, State, Zip	
Telephone:	
Fax:	
E-Mail Address:	
Signed:	
Print Name:	
Title:	
Date:	

ATTACHMENT 8 – COST PROPOSAL RESPONSE FORM**COST PROPOSAL
RESPONSE FORM****STATE OF IOWA
CRIMINAL AND JUVENILE JUSTICE
PLANNING****REQUEST FOR PROPOSAL NO.**

Submitted by:	
Firm Name:	
Address:	
City, State, Zip	
Telephone:	
Fax:	
E-Mail Address:	
Signed:	
Print Name:	
Title:	
Date:	

ATTACHMENT 9 – MANDATORY COST PROPOSAL FORMAT**MANDATORY COST PROPOSAL FORMAT**

DESCRIPTION: (ADD LINES AS NECESSARY)	COST:
TOTAL, ALL-INCLUSIVE, NOT-TO-EXCEED COST:	

Submitted by _____ Date: _____

Company: _____ City/State: _____

Attach a signed W9 Form.

**All pricing shall be FOB Destination, freight & handling costs
included in prices.**